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AFFAIRS IN CUBA.

SPEECH

OF

HON. JOHN C. SPOONER,
OF WISCONSIN,

IN THE

SENATE OF THE UNITED STATES,

FRIDAY, APRIL 13, 1898.

WASHINGTON.

1898.

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SPEECH
OF
HON. JOHN C. SPOONER.

The Senate having under consideration the joint resolution (S. R. 149) for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect, reported by Mr. DAVIS from the Committee on Foreign Relations, as follows:

"First. That the people of the Island of Cuba are and of right ought to be free and independent.

"Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect."

Mr. SPOONER said:

Mr. PRESIDENT: I shall not attempt to disguise the fact that I sincerely deprecate this debate. I lament the difference in opinion among us which has given rise to it. Without intending unduly to criticise any Senator, I deplore the spirit of some of the utterances to which we have listened to-day. We are, as the Senator from Colorado [Mr. WOLCOTT] said, at the threshold of war. He is a very sanguine man who thinks he can discover any escape from it. Carping and criticism and fault-finding with the President, the commander who, under the Constitution, is to lead us, is an ugly and unfit prelude to the roar of cannon, the rattle of musketry, the roll of war drums, and the groans of the wounded and dying. He has borne himself nobly in his high office.

The suggestion of want of sincerity upon his part, or an attempt to belittle his diplomacy would, if effective, lessen the confidence of our people in him and diminish his influence with foreign nations during the conflict upon which we reluctantly enter. If we must go into war, as seems inevitable, he is, by choice of the American people, our leader, sworn to his duty, able and willing to discharge it, and, as patriotic citizens, we are to rally around him, strengthen his arms, cooperate with his efforts; and, if there be aught in him, now or hereafter, which either a fair or an unfair man could criticise, let us wait until after the battle. From this time on to the end let us rather say to him, "God bless and guide you. Lead on; we follow."

I do not stop to make reply to the suggestion that his failure to recognize belligerency a year ago, or since, has been due to the influence of Spanish bondholders upon the American Government.

I know nothing of such bondholders. I know however, and so does the Senate, and so do the people of the United States, and so does the world, unless the suspicion uttered here yesterday and to-day finds lodgment somewhere over the sea, that there is no man living less capable of being influenced by bondholders against liberty than the present President of the United States.

Under our Constitution he is charged with the duty of conducting our foreign relations and our intercourse with foreign governments. He can not take the world into partnership in conducting negotiations with other governments. Publicity is fatal to delicate and difficult international negotiations. Business men keep their own business secrets. Much more so must governments.

I have felt that the President should have all the time he required, and not only time, Mr. President, but patience, in the Congress and among the people, to enable him to conduct to the end the diplomatic negotiations with Spain—a people proud, sensitive, and passionate.

I had the honor to state a year ago in a short address here my belief that the people of the United States desired the independence of Cuba and my own earnest wish for this consummation. I have never in any wise abated my opinion that this must come, or my hope that it should come, but I have, with painful earnestness, desired that the President be permitted to exhaust every possible resource and art of diplomacy before resort to the alternative of war.

I confess I have regretted some of the utterances which from time to time have been made in the Senate—bold, generous, and worthy, as in spirit most of them were. I have regretted them because I felt they might embarrass the President in delicate and difficult negotiations with a peculiar people. I have regretted them because I knew that if they could by any possibility result in a rupture of diplomatic intercourse and precipitate war we would be found unready. I have deprecated them in the Senate for another reason, that under our form of government this body sustains a peculiar relation to the President in the matter of foreign relations. He has the right, in stress, to come into this Chamber, to ask us to close our doors to the world, and permit him to take this body into his confidence, and to invoke its advice. This has been done once in a crisis since the Government was founded. And therefore it has seemed to me that here, of all places, he should be free from criticism and the embarrassment of either sensational or condemnatory speech.

The President needs no defense from me. He has conducted the negotiations. I do not know what the correspondence is. I have the best of reason, however, to believe that his failure to transmit it was due to reasons which would commend themselves to every thoughtful person in this country.

It is not easy to conceive a more difficult and burdensome duty than has under the Constitution rested upon him. He has been obliged to so conduct this negotiation as not only to satisfy his own great constituency, if possible, but with a view to commend this Government to the enlightened sentiment of the governing powers of the world. He has traveled, of necessity, the path of diplomacy alone, and I can well imagine it has been a long and wearisome journey. He has felt the pressure of public opinion here, stirred to its depths. It is to the eternal glory of our people, however, that, notwithstanding horrors unspeakable, they have main-

tained an attitude of dignity and calm, awaiting with intense feeling, but with wonderful patience, the march of events.

The President has seen some old friends seem to fall away from him. He has heard the voice of criticism. Doubtless he has been stung by the tongue of slander. I do not know, for I have heard no word from him. I do know that, as an American President should, he has gone along the pathway calm, patient, intrepid to the end. There is not to-day in any court of Europe, so far as I know, except the Spanish court, a statesman or a great newspaper who or which has not applauded his firmness, his discretion, and the dignity of his demeanor in the midst of domestic excitement and Congressional impatience. This good opinion of our President is worth much to our people. Some may in the rush and whirl of excitement in our own land forget—but we here have no right to forget—that it is of the utmost consequence that our case shall seem strong and clear and humane and unimpeachable to those governments of the world whose good opinion we invoke and whose sympathies we may well desire, because when war once begins, God alone can tell when it will end or who before it ends shall become participants in it. I have, as an American Senator, taken pride in the fact that those showering praise upon the President were but a little time ago bitterly prejudiced against him because of his economic theories, which they antagonize.

The President has been criticised for the tone of his message in regard to the *Maine*. It has been said that it was cold and passionless. The Chief Executive of 70,000,000 people, conducting a case almost inevitably leading to war, must be passionless, must be calm. If he be not so in the surging tide of popular passion, what, then, is to become of a government by the people?

I approved when that message was read here, and I approve now, its spirit, its tone, and its language. The President was not called upon to denounce the Spanish Government as guilty of participation in the explosion of the *Maine*. It would have been the height of un wisdom. He could, and a rash man would have so done, have sent a message to Congress which would have broken off in a moment diplomatic relations and plunged this country into war. Were we ready? No, Mr. President! He knew then, we know now, and the people know now, that we were not ready. It was the President's duty to be calm and patient, even to temporize, that we might become prepared for war, and every hour preparations have gone forward under his direction.

The President has, too, been criticised for delaying his message from Thursday until Monday, and it has been intimated in the Congress that it was an artifice, a piece of diplomacy to gain time. The President in this did wisely; did only his duty. The dispatches from General Lee—some of which I have seen, all of which were seen by the chairman of the Committee on Foreign Relations—rendered it impossible, in the interest of human life, including the life of that chivalric representative of this Government, that the message should be communicated to the world until the American citizens in Cuba who desired to come home were safely out of that country.

There is not a member of this Senate, there is not a manly man in the United States, who, had he been President, would not have withheld that message even had he known that failure to transmit it would lead Congress in its impatience to pass unanimously a declaration of war. It is an awful responsibility, that which

has been upon the President; infinitely more than the responsibility which rests upon us, because the responsibility here is divided. We may say what we please; we may utter the views which commend themselves to our judgment, but we know that in the end the majority of the Senate determines the action of the body. We may win the plaudits of the people by patriotic utterances; we may defend ourselves on the floor of the Senate. The President can not. He is answerable to a greater constituency. He is answerable to the civilized world.

I have been pained by some criticisms made to-day upon the message of the President. It has been argued that he is committed in his message to the proposition that an army carrying the flag of the United States shall go over to the Island of Cuba, plant that flag upon the grave of Maceo, and train its guns on Gomez. That is an impossibility. The flag of the United States has never floated above any army in my day except an army of freedom. William McKinley, the President of the United States, could not and would not send forth an army upon such a mission, and all fair men know it and acknowledge it.

While one of the gentlemen who has seen fit to belittle his diplomacy and to criticise him in a strong, stern, and bitter way was a boy of 11 or 12 years, living in peace, with opportunity for education, he who is now President had abandoned the schoolroom and was marching and fighting under our flag where the bullets of an enemy were "weaving the air about him with lines of death and danger;" and never from that day to this has he uttered a thought which was not in vindication and appreciation of human liberty. Never from that day to this, Mr. President, has he done an act which could be imputed to a mercenary motive.

We are not called upon here to enact the President's message. I shall not attempt to vindicate every sentence in it. I have never yet read an elaborate document every portion of which commended itself absolutely to my judgment.

But I repudiate, not from anything he has said to me, but from the life he has led in public and in private; I repudiate because of his utterances from the beginning, the notion that his language was intended to be construed as contemplating an army of occupation under the American flag to helpenslave further under the banner of Spain the people of Cuba. That is an absurdity. The man does not live who can more strongly demonstrate the absolute impossibility of continued Spanish government in Cuba than the President has done by his message. His recommendation, I think, has been grossly misconstrued. The argument which has been made upon it is the sort of argument which would "rail the seal from off the bond."

I am bound to assume that such utterances had no partisan purpose. I will not think that they could be born out of purpose to subserve a party interest. The message must be read as a whole, and not in the light of some single sentence in it. If our armies should occupy Cuba, if the Spaniards should be expelled, as the Spaniards must and will be expelled from Cuba, and Gomez should not be able to restrain those who follow his standard—for in them, remember, is the hot blood of the Spanish people, although they are themselves struggling to be free from Spain—if he should find himself unable to protect the women of that island from lust, and to protect men in their property and in their lives, it would be the duty, as it would be the right, of the Government of the United States to lay a repressive hand upon his forces and

to preserve peace. That the President of the United States could do more than that, or that an army under our flag could do more than that in Cuba, no man can for one moment believe. The President says:

In view of these facts and of these considerations, I ask the Congress to authorize and empower the President—

Of course he could not say "direct the President." I am not here to-day to employ any technical argument; but I have little doubt that we have no power to "direct" the President. This is a Government of three great coordinate departments, each independent and supreme within its sphere. If anything is settled under our Constitution as to this Government, that is settled. Congress can not constrain the courts; Congress and the President together can not dictate to the judiciary.

The President can not "direct" Congress. I do not believe, as a matter of law, Congress can "direct" the President. He is not our servant; we are not his master. Congress can pass a law; Congress can lay down "a rule of action," and then the President is bound to execute it. He is bound by a higher obligation than any verbal "direction" by Congress. He is bound by his oath of office, an oath registered in heaven, to support the Constitution, which says "he shall take care that the laws be faithfully executed." Congress may declare war. That is the power of Congress; but war being declared, it is to be conducted by the President, not because we say so, but because the Constitution says so. He is Commander in Chief. It is not to be believed that the time will ever come when there will be in any exigency which involves the honor of this country or the vindication of our flag a want of cooperation between the Congress and the Executive. His recommendation is:

I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure—

Not to "establish." I like the word "secure" better than the word "establish," because under the word "secure" the present so-called government of Cuba, if the facts shall hereafter justify it, might be recognized—

in the island the establishment of a stable government, capable of maintaining order and observing its international obligations.

That can mean, as argued by the Senator from Massachusetts [Mr. LODGE] the other day, only an independent government in Cuba. Canada has no "international" obligations. Australia has no "international" obligations. No colony or dependency can have any international obligations. That phrase can refer only to treaty obligations—to obligations growing out of conventions between independent governments. Bonds issued by governments are not "international" obligations.

Certainly, as the Senator from Massachusetts reminds me—and I thought I had expressed it—a government "in the island" with "international obligations" can not be the government of Spain. It is impossible, fairly reading the language, keeping the heart free from bitterness and the mind free from suspicion, by which the President invokes Congressional action, to construe it in more than one way, and that is the way in which I have just read it, as involving the establishment of an independent government in Cuba.

If a perusal by the President of some of the criticisms uttered here to-day give him pain, he may well remember with comfort

that such criticisms, painful as they may be, are not new in the history of this country. They were harsher when directed against George Washington because he insisted on maintaining the neutrality between Great Britain and France. It is the same harsh criticism, Mr. President, which wounded the tender heart of Abraham Lincoln; the same hostile spirit which filled with thorns his pathway. It is the same harsh note which, during the years of General Grant's Administration, when there was an insurrection in Cuba attended by frightful atrocity, was sounded in his ear because he would not recognize belligerency or independence. No; the President may well be content that he has done all that he could do to avert war. Thoughtful men thank him for it now. All will be grateful to him for it hereafter.

I agree with the Senator from Colorado [Mr. WOLCOTT] in reprobation of the utterance which once or twice has been made in the Senate, that this country needs war to rekindle a decaying spirit of nationality, to bring again into life the spirit of manliness, the love of liberty. We are not so very far removed from war. There is hardly a man on the other side of the Chamber who does not remember with a shudder the roar of cannon, the mad, impetuous charge, the rush and whirl of battle. Twenty-two such men, I am told, are in this Chamber.

It may seem a long time to us, but it is only a day in the life of a nation. With a pension list of \$140,000,000 a year, hundreds of thousands of wounded soldiers North and South, all about us, numberless homes still desolate, numberless hearts still aching, and the waste of that beautiful Southern land not yet repaired, we need no new object lesson in war to rekindle the military spirit of our people. No, sir; and the people of the United States, when this history shall have been written, when they deal not with the present, but with the retrospect, will thank President McKinley that, before the last "argument" came, he did all he could in the midst of passion to maintain peace with honor. Moreover, the war of which we knew was, I fear, little like war of to-day, with the death-dealing instrumentalities of this inventive civilization. War is terrible in its every aspect. I wish the cup might pass, without dishonor, untasted, from our lips.

Mr. President, I wish with all my heart that we might have been able to agree upon a resolution for which as one man we could have voted, but we could not. I find fault with no man that it is so.

I do not like, I am frank to say, the resolution reported by the Committee on Foreign Relations. I have the utmost confidence in its members and the profoundest respect for their ability, but the resolution to me, as a declaration upon which we are to go into war, is illogical, inconsistent, and untenable, and I say that fully conscious of the fact that we are going to war, and that one of its results will be to make Cuba free. It is thus:

First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

That the people of Cuba ought to be free and independent, I certainly affirm. That the people of Cuba *are* free and independent, I do not know. I wish I knew that to be true. I think I know that if it were true we would not to-day be facing war or debating upon the methods in which it shall be commenced, to *make* that people free. If the people of Cuba are free and independent, why are we to go there? What should perplex us about them?

Another clause of the resolution reads:

Second. That it is the duty of the United States to demand—

It is the duty of the United States to demand—to demand of whom? Of Spain of course. Remember this is to be a law, to be put upon the statute book—and what sort of a law is it? To demand of Spain what?—

And the Government of the United States does hereby demand that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

If the people of Cuba *are* free and independent—and that is a mere legislative assertion of fact—what “authority and government” can Spain have in the Island of Cuba?

Mr. GRAY. We make a demand and wait for an answer.

Mr. SPOONER. The resolution says:

At once relinquish its authority and government in the Island of Cuba.

Is that in any wise consistent? I care nothing for the mere language of it, but this is a momentous paper which we are to “enact.” It is to go into history; it is the guide of the President; it is our justification before the world in a legislative way; and to say that the people of Cuba are in fact “free and independent,” and at the same time to declare that Spain has “authority and government” there, seems to me utterly inconsistent. The two statements, like Kilkenny cats, put side by side, eat each other up.

Mr. MORGAN. Will the Senator from Wisconsin allow me to interrupt him for a second?

Mr. SPOONER. I will, certainly.

Mr. MORGAN. I understand that declaration to be not a historical declaration of the existing facts or situation, but it is a high political decree, such a decree, for instance, as we put in our party platforms—a basis of political action, not as something already accomplished, but something that is to be accomplished—that being their right, that being the ground of their unification in achieving and accomplishing that right. That is the way I understand it.

If the Senator will allow me further, that, of course, is copied from our own Declaration of Independence.

Mr. SPOONER. Certainly.

Mr. MORGAN. And our Declaration of Independence was made at a time when historically we were neither free nor independent.

Mr. SPOONER. Yes.

Mr. MORGAN. And yet the declaration was good as a high political decree or enunciation on our part. Now the question is asked, Why do we undertake here to extend that declaration and make it apply to Cuba? There is but one reason for it in the world, and that is that the Cuban Republic has made the same declaration, and we concur in it.

Mr. SPOONER. There is a very broad difference between our declaration that we are free and our declaration that somebody else is free. You may adopt a platform of principles to govern you, but you can not adopt one to govern me. This is a declaration of fact as to a third party. It is a declaration that the people of Cuba are in fact free and independent, is it not?

Mr. MORGAN. No; and I am satisfied the committee did not so mean it. The committee did not intend to tell a broad, historical falsehood in the presence of the world.

Mr. SPOONER. I am like the Senator from Virginia [Mr. DANIEL] in one respect, and I wish I were like him in some others—in this, that I only understand one kind of English language. When the committee assert "that the people of the Island of Cuba are, and of right ought to be, free and independent," I suppose the committee mean it.

Mr. MORGAN. If the Senator will allow me, I suppose our fathers in the convention which declared our independence meant it also in the same sense. The fact was, we were not free and independent, and yet we declared we were.

Mr. SPOONER. There it was a declaration of their own independence; it was an enunciation of a high purpose by a people to be free. I can understand how the so-called Republic of Cuba can declare in their constitution "that we are free and independent of the Government of Spain;" but it is an entirely different proposition for the Congress of the United States, which ordinarily does not deal in mere declarations of fact, but deals in legislation, to solemnly enact as a fact what a great many of us do not believe to be a fact, and what the Senator himself admits is not a fact. When you say "of right ought to be free and independent," that is true.

Mr. GALLINGER. Will the Senator allow me to make a suggestion?

Mr. SPOONER. The only reason I dislike to be interrupted is that thereby I am compelled to take more time than I wish.

Mr. GALLINGER. It is on this very point. What does the Declaration of Independence mean when it says "that all men are created equal?" Is not that simply a declaration of an inherent or inalienable right?

Mr. SPOONER. That is an abstraction. That means that all men ought to be free and independent in fact, but it does not mean that all men are in fact free and independent. If it meant that, it would be false. Since that declaration rivers of precious blood have been shed to make men free and equal in our own land. You have translated that declaration here when you say that "the people of Cuba of right ought to be free and independent," and we all agree to that. This is not a party platform. This is a legislative act, upon which is to be based war, and I wish it to be true in fact. You are asking Congress to vote here as a fact that the people of Cuba are free and independent. You might say the same thing of the Armenians. You might say the same thing of any people on the earth, however enslaved they may be, however miserable they may be if it only means that they assert it.

Mr. GALLINGER. We assert it for them.

Mr. SPOONER. We are asserting here for ourselves that they are free and we are asserting here that they ought to be free and independent. Have they asked us to assert it for them that they are free? It looks to me to be a call upon the Congress to assert as a fact what is not the fact, and if it be a fact—and that is what troubles me—if they are in fact free and independent, if Gomez and his insurgent army with the sympathy of the people of Cuba have become free and independent, they must have a flag which floats over that island; Spain must have been expelled, at any rate her sovereignty broken in Cuba; if those people are in fact—

Mr. FORAKER. Will the Senator from Wisconsin allow me to interrupt him for a moment?

Mr. SPOONER. Certainly.

Mr. FORAKER. The Senator says they must have a flag. I wish to advise the Senator from Wisconsin that they do have a flag and that when the *Maine* met with its disaster, that flag, by order of the Republic of Cuba, was placed at half-mast and has been there from that day until this.

Mr. SPOONER. Of course. If the Senator had not interrupted me in the middle of a sentence, he would have heard me say that if they are in fact free and independent and the sovereignty of Spain has gone from that island, their flag would be floating at half-mast all over the island instead of in two or three provinces. Of course I do not care to spend more time upon that point.

There is another element in this matter. The Senator from Massachusetts [Mr. HOAR] suggests to me—and there is something in it—that that statement, if it is true, would make them responsible for the disaster to the *Maine*.

Mr. FORAKER. What statement would make them responsible?

Mr. SPOONER. That they are absolutely and in fact now free and independent.

Mr. FORAKER. Does the Senator from Wisconsin mean to insist that a people can not be free and independent and at the same time not be in absolute control of each and every particular locality within the territory which rightfully belongs to them?

Mr. SPOONER. No; that is different.

Mr. FORAKER. That would be a very strange proposition.

Mr. SPOONER. That is a different question.

Mr. FORAKER. While it is true that they are free and independent within the meaning and interpretation properly of international law, it is also true, as we all know, that there are localities in Cuba where they are not in possession of the territory, as in the case of Havana and the harbor of Havana.

Mr. SPOONER. I will get to that point.

Mr. FORAKER. The Senator had better come to it pretty soon.

Mr. SPOONER. I will come to it when I discuss the question as to whether they have a government there entitled upon principles of international law to be recognized. I will admit, as I must admit upon the authorities, that it is not essential to their right to recognition that they should control every spot and place in the island.

Mr. FORAKER. Has the Senator any question but that Cuba will be free and independent in the sense that it will control each and every spot in the island within a very short time after we intervene?

Mr. SPOONER. I have no doubt on earth that within a very short time after we intervene the people of Cuba will be free and independent; and that is why I do not think they are so now.

There is another peculiarity about this joint resolution. I do not intend to be hypercritical about it. That is this:

That it is the duty of the United States to demand—

I can understand that as a legislative expression of opinion—

and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

When before has the Congress of the United States undertaken to send an ultimatum to a foreign government? Where does it

find in the Constitution any warrant for taking from the hands of the Executive the conduct of our foreign relations? I had supposed until now that the demands of the United States upon foreign governments, by way of ultimatum or less than ultimatum, could only proceed through the President and that there could not be, in the language of a resolution like this placed upon the statute books as a law, a demand upon the Government of Spain that she at once relinquish her authority and government in the Island of Cuba and withdraw her land and naval forces from Cuba and Cuban waters.

I care nothing about it except that if the view which I have taken of it is a correct one, it is not the logical and dignified method which ought to be pursued in this exigency by the United States, while a different and better one would get the same results.

Mr. TELLER. I should like to interrupt the Senator to ask him if he will indicate what he thinks ought to be the resolution?

Mr. SPOONER. I think the resolution of the Senator from Colorado is infinitely better than this one.

Mr. TELLER. I have several.

Mr. SPOONER. I have seen but one, and I mean the one I like. If the Senator will give me the one he likes, I shall probably like it.

Mr. TELLER. It has not been offered.

Mr. STEWART. Read it.

Mr. SPOONER. I will read it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the war now existing—

It is not the resolution I had in mind.

Mr. GRAY. Read it.

Mr. SPOONER. Very well.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the war now existing between the Government of Spain and the Government of Cuba has been conducted by Spain in flagrant violation of the laws of civilized warfare to such an extent as to shock the moral sense of the nations of the earth and greatly to the injury of the United States—

Now I come to it:

Therefore the President of the United States is hereby authorized and directed to take at once such steps as may be necessary to terminate hostilities in the Island of Cuba and to secure to the people of that island an independent republican government by the people thereof; and the President is authorized and directed to use, if necessary, the land and naval forces of the United States for the purpose of carrying this joint resolution into effect.

That is very like the House joint resolution, which I favor. The word "independent" is a great word there. Doubtless there were good reasons why the President did not use it. There is no good reason why we should not use it. That means what? It means independent of Spain, does it not? It means another thing, Mr. President, quite as important from the standpoint of international law. It means independent of us, because at the very foundation of this right of intervention is the principle that beyond all other things you must make it perfectly clear that you have no ulterior or selfish purpose whatever.

Mr. TELLER. Will the Senator allow me to make a suggestion? The resolution which he has read has never been offered by me. It was prepared before the President's message came to the Senate. After I read that portion of the message which seemed to me to indicate that the President contemplated putting his

hand upon the insurgents as well as upon Spain, I concluded that I preferred to vote for the provision that had come in from the minority of the committee, recognizing the independence of the Republic of Cuba.

Mr. SPOONER. If the resolution which I have just read to the Senate was right when the Senator drew it, it is right now notwithstanding anything there may be in or omitted from the President's message, because we are to deal with this question ourselves. He has sent the matter to us, as he must under the Constitution, for the power, primarily, is with us. We can not abdicate our function or our judgment because of any mistake we may think, or any of us may think, he has made. If that is the resolution which, without the recommendation of the message, we should adopt, it is what we should adopt now.

Mr. President, I have been inclined to think, although I may be wrong about it, that the first clause of the joint resolution really recognizes the independence of the so-called Republic of Cuba.

Mr. TELLER. If the Senator will allow me, I will state that I intended the first lines to recognize independence, for I mentioned the government of Cuba, and I intended thereby to mention what you might call the revolutionary government.

Mr. PLATT of Connecticut. The Senator from Wisconsin is talking about the other joint resolution.

Mr. SPOONER. I am talking about the joint resolution reported by the Senate committee.

That the people of the Island of Cuba are, and of right ought to be, free and independent.

I hardly know what it means unless it recognizes the government, because one could hardly imagine a people to be free and independent in a condition of anarchy, as any people are without a government; and if we declare that a people are free and independent who have a government, of necessity almost we thereby recognize in a way the independence of that government.

Mr. WHITE. Will the Senator from Wisconsin permit me? Is not the word "people," as used in the joint resolution and in that connection, the equivalent of "nation"?

Mr. SPOONER. I think a free and independent people, if they have a government, would be a nation, and if they have not a government, they might be independent of other powers, but they would be in a condition of anarchy among themselves and not a "free people."

Mr. WHITE. It would not be a political entity.

Mr. SPOONER. It would not be a political entity. But while I have no earthly objection to interruption so far as debate is concerned, I speak with the utmost reluctance and I am painfully anxious to be through. Many Senators desire to speak, and I do not wish to consume an unnecessary moment, as I am obliged to do if I am interrupted.

Mr. President, I am not willing to vote for a proposition to recognize the independence of the so-called Republic of Cuba. It is not to be inferred, because I say that, that I do not sympathize with the struggle of that people, that I do not appreciate the gallantry, the skill, the devotion, the strategy which have characterized that struggle for liberty, for I do. But independence is a fact. It is not an expression of sympathy. It is a fact, and that is all it is. I may say it is a fact, believing it to be a fact in a particular case.

My friend the Senator from Illinois [Mr. CULLOM] may, upon the evidence before him, doubt or deny it. Whether the so-called Republic of Cuba is or is not independent is purely, from the standpoint of international law and the practice of this Government, a question of fact.

My first objection to recognizing and declaring that fact in the pending joint resolution is that in my opinion it is not a legislative function to declare that fact. I do not intend to take the time to argue with any elaboration that proposition, although I have examined it with great care. It has been argued in the Senate before. The Senator from California [Mr. WHITE] delivered a speech of very great ability and of the utmost learning and research upon the question. I believe it to be an Executive, not a legislative, function, and I discuss it only for a few moments in order to lead me to a proposition which I feel bound in the discharge of duty to submit to my brother Senators in this exigency.

There are four ways, some of them only qualified, of recognizing the independence of a state. Under the Articles of Confederation it was the Congress that received and sent ambassadors, ministers, etc. The Constitution of the United States changed that and gave to the President, as one of the executive functions the power to receive ambassadors and other public ministers. The Constitution vests in him the executive power of this nation and in him alone, with the qualification which is made as to participation by the Senate. All over the world the first and the usual evidence of a recognition of independence is the reception of an ambassador or minister from the government recognized.

The President, no man will deny, could to-morrow receive a minister from the Republic of Cuba. He could telegraph to-night to Mr. Palma to visit him to-morrow at the White House and present his credentials, and before 12 o'clock there would be a valid, irreversible recognition of the Cuban Republic, so far as we are concerned. Congress could not alter it. Does anyone dispute that? Necessarily the power to receive a minister involves the power to determine whether the government which sends the minister is entitled to recognition as one of the independent states of the world.

There is another way of recognizing independence. It can be done by treaty. That is an executive function. No one but the President can initiate a treaty, and then it requires the participation of the Senate.

If the President and the Senate should enter into a treaty with the Republic of Cuba, that would be recognition. That is the way the Government of France recognized our Republic in the days of the Revolution, by entering into a treaty of commerce with us. What are the other ways, Mr. President? The Congress may pass a *law*—pass a *law*, mind you—appropriating money to pay the salary of a minister to the Republic of Cuba. If the President signs the bill, that would be a recognition, in a sense, of the Cuban Republic. It would be a recognition of it so far as Congress could recognize it. It would not be absolute. No power on earth, in my judgment, could compel the President to send a minister there until he had determined that it was a government entitled to recognition. Nor could Congress coerce in any way the President to receive a minister from there.

The passage of such a bill would not require the President to receive a minister from the Republic of Cuba—not at all. But I

call Senators' attention to the fact that, while that would be an incidental recognition of the Republic of Cuba, it would not be, as we propose here, a *mere declaration of the fact*. It would be an *incident to the exercise of a clear legislative power*. The power to create the office and provide the salary is, of course, purely legislative. And Congress might pass a law regulating the value of the coins of the Republic of Cuba to be circulated in this country, and that, when signed by the President, would be as one incident to the exercise of the legislative power, a recognition of the republic. Still for purposes of commercial intercourse it would not recognize the Republic of Cuba.

I wish to say here that, as a lawyer—I know other Senators differ with me about it; they are entitled to their opinions and I am entitled to mine—I believe it to be an absolutely sound proposition that the recognition of independence substantively is a function of the Executive, and that when Congress attempts, not in the exercise of the legislative power, but as a mere declaration of a substantive fact, to do that thing, it usurps an Executive function and attempts to make a precedent which ought not, in the interest of this Government, to be established. Alexander Hamilton, in the *Pacificus* letters, says:

The right of the Executive to receive ambassadors and other public ministers may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized, or not.

It needs no argument to show that the power to receive ambassadors, ministers, etc., of necessity involves the power to determine whether the authority which sends is an authority entitled to send. Every President, without exception, from the beginning of the Government, has determined this matter by receiving ministers, and from this judgment there has been no appeal. No law is to be found in the archives of the Government in which Congress has attempted to recognize independence by a mere declaration.

Mr. Justice Story says, in his *Commentaries*:

SEC. 1555. The next power is to receive ambassadors and other public ministers. This has been already incidentally touched. A similar power existed under the confederation; but it was confined to receiving "ambassadors," which word, in a strict sense (as has been already stated), comprehends the highest grade only of ministers, and not those of an inferior character. The policy of the United States would ordinarily prefer the employment of the inferior grades; and therefore the description is properly enlarged, so as to include all classes of ministers. Why the receiving of consuls was not also expressly mentioned, as the appointment of them is in the preceding clause, is not easily to be accounted for, especially as the defect of the confederation on this head was fully understood. The power, however, may be fairly inferred from other parts of the Constitution; and, indeed, seems a general incident to the executive authority. It has constantly been exercised without objection; and foreign consuls have never been allowed to discharge any functions of office until they have received the exequatur of the President. Consuls, indeed, are not diplomatic functionaries or political representatives of a foreign nation, but are treated in the character of mere commercial agents.

SEC. 1556. The power to receive ambassadors and ministers is always an important and sometimes a very delicate function, since it constitutes the only accredited medium through which negotiations and friendly relations are ordinarily carried on with foreign powers. A government may, in its discretion, lawfully refuse to receive an ambassador or other minister without its affording any just cause of war. But it would generally be deemed an unfriendly act, and might provoke hostilities unless accompanied by conciliatory explanations. A refusal is sometimes made on the ground of the bad character of the minister, or his former offensive conduct, or of the special subject of the embassy not being proper or convenient for discussion. This, however, is rarely done. But a much more delicate occasion is when a

civil war breaks out in a nation, and two nations are formed, or two parties in the same nation, each claiming the sovereignty of the whole, and the contest remains as yet undecided, *flagrante bello*. In such a case a neutral nation may very properly withhold its recognition of the supremacy of either party or of the existence of two independent nations, and on that account refuse to receive an ambassador from either. It is obvious that in such cases the simple acknowledgment of the minister of either party or nation might be deemed taking part against the other, and thus as affording a strong countenance or opposition to rebellion and civil dismemberment. On this account, nations placed in such a predicament have not hesitated sometimes to declare war against neutrals as interposing in the war, and have made them the victims of their vengeance when they have been anxious to assume a neutral position. The exercise of this prerogative of acknowledging new nations or ministers is therefore, under such circumstances, AN EXECUTIVE FUNCTION OF GREAT DELICACY, which requires the utmost caution and deliberation. If the Executive receives an ambassador or other minister as the representative of a new nation, or of a party in a civil war in an old nation, it is an acknowledgment of the sovereign authority *de facto* of such new nation or party. If such recognition is made, it is conclusive upon the nation, unless, indeed, it can be reversed by an act of Congress repudiating it. If, on the other hand, such recognition has been refused by the Executive, it is said that Congress may, notwithstanding, solemnly acknowledge the sovereignty of the nation or party. These, however, are propositions which have hitherto remained as abstract statements under the Constitution, and therefore can be propounded, not as absolutely true, but as still open to discussion if they should ever arise in the course of our foreign diplomacy. The Constitution has expressly invested the Executive with power to receive ambassadors and other ministers. It has not expressly invested Congress with the power either to repudiate or acknowledge them. At all events, in the case of a revolution or dismemberment of a nation, the judiciary can not take notice of any new government or sovereignty until it has been duly recognized by some other department of the Government to whom the power is constitutionally confided.

SEC. 1567. That a power so extensive in its reach over our foreign relations could not be properly conferred on any other than the executive department will admit of little doubt. That it should be exclusively confided to that department, without any participation of the Senate in the functions (that body being conjointly intrusted with the treaty-making power), is not so obvious. Probably the circumstance that in all foreign governments the power was exclusively confided to the executive department, and the utter impracticability of keeping the Senate constantly in session, and the suddenness of the emergencies which might require the action of the Government, conduced to the establishment of the authority in its present form.

Mr. Justice Story, delivering the opinion of the court in *Williams vs. The Suffolk Insurance Company*, 3 Sumner, 272 et seq., says, among other things:

It is very clear that it belongs *exclusively to the executive department* of our Government to recognize from time to time any new governments which may arise in the political revolutions of the world; and until such new governments are so recognized they can not be admitted by our courts of justice to have or exercise the common rights and prerogatives of sovereignty.

This was in 1838. The Supreme Court of the United States affirmed this judgment, in *Williams vs. The Suffolk Insurance Company*, 13 Peters, 420, Mr. Justice McLean delivering the opinion, in which it is said:

And can there be any doubt that when the *executive branch of the Government, which is charged with our foreign relations*, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view it is not material to inquire, nor is it the province of the court to determine, whether the Executive be right or wrong. It is enough to know that in the exercise of his constitutional functions he has decided the question. Having done this under the responsibilities which belong to him, it is obligatory on the people and Government of the Union.

In *United States vs. Hutchings*, 2 Wheeler's Criminal Cases, 543, Chief Justice Marshall had occasion to pass upon the question. It was a prosecution for piracy, and the question arose whether at a certain date the Republic of Buenos Ayres was independent. Counsel contended that the independence of Buenos Ayres com-

menaced with their declaration of independence, etc. Chief Justice Marshall said:

That a nation became independent from its declaration of independence only as respects its own government and the various departments thereof. That before it could be considered independent by the judiciary of foreign nations it was necessary that its independence should be recognized by the executive authority of those nations. That as our Executive had never recognized the independence of Buenos Ayres, it was not competent to the court to pronounce its independence.

In the Prize Cases (2 Black, 635), in which the Supreme Court had occasion to deal with the question, and, although it related to a domestic difficulty, the principle is substantially the same, the court says:

Whether the President, in fulfilling his duties as Commander in Chief in suppressing an insurrection, has met with such armed hostile resistance and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this court must be governed by the decisions and acts of the *political* department of the Government to which this power was intrusted.

The italics are used by the court.

In the case of *The United States vs. Trumbull* (48 Federal Reporter, 99), referring to the late civil war in Chile, Judge Ross says:

It is beyond question that the status of the people composing the Congressional party at the time of the commission of the alleged offense is to be regarded by the court as it was then regarded by the political or executive department of the United States. This doctrine is firmly established.

In the case of the *Itata* (56 Federal Reporter, 505) Judge Hawley, speaking for the circuit court of appeals for the ninth circuit, said:

The law is well settled that it is the duty of the courts to regard the status of the Congressional party in the same light as they were regarded by the executive department of the United States at the time the alleged offenses were committed.

See, also, Pomeroy's Constitutional Law, pages 669-672.

It is impossible on this occasion to thoroughly discuss the question with reference to the utterances of distinguished statesmen and to the precedents upon the subject. Any Senator who cares to pursue it will find in Senate Document No. 56, Fifty-fourth Congress, second session, abundant information.

The practice has been all one way, and I do not find any case which, fairly considered, sustains the power of Congress to, *by a mere declaration*, recognize the independence of a foreign state.

Mr. DANIEL. Will my friend from Wisconsin allow me to interrupt him for just a moment?

Mr. SPOONER. Certainly.

Mr. DANIEL. I want to call the attention of my honorable friend to the case of *The United States vs. Palmer* (3 Wheaton, 648) and the recent decision of the Supreme Court of the United States in 137 United States Reports, page 212, the opinion given by Judge Gray, and I call his attention to the fact that these decisions declare the proper authority to recognize a government are the legislative and executive departments of the United States.

Mr. SPOONER. It has been done that way, as I stated a while ago. If the Congress to-day should amend the diplomatic and consular appropriation bill and insert a provision providing a salary for the minister to the Republic of Cuba, and the President should sign it, that would be, I think my friend will admit, as far as Congress could go in the exercise of the legislative power to

declare or acknowledge that fact, but that would not receive a minister or send one.

Mr. DANIEL. They can do it in a hundred ways.

Mr. SPOONER. There is one great reason which I never have been able in my own mind to escape why this must be, in the last analysis, considered an executive rather than a legislative function, and that is this: It is a shifting affair. We may recognize a republic to-day, and four months from now the mother country may have conquered it and the republic will have ceased to exist.

If this thing, which is a mere declaration of fact, is to have the effect of a law, a "rule of action" binding upon the Executive, it must control him, whether it is true or false, until the power that made it unmakes it. So it is perfectly clear, in my judgment, that it is essential to the interest of the Republic that this assertion which may be true to-day and six months hence may be false, should be left for determination, from time to time, by the executive department of the Government. John Quincy Adams thought so. Daniel Webster distinctly stated so.

Mr. TELLER. I wish to ask the Senator if he is not aware that the legislative department of the Government on various occasions has denied that proposition?

Mr. SPOONER. I am coming to that point.

Mr. TELLER. I am not expressing any opinion myself on the question. I wish to call his attention, if he will allow me, to a resolution which passed the House December 19, 1864, by a vote of 118 to 8. Will the Senator excuse me if I read it? I think it may add something to our knowledge.

Mr. SPOONER. The Henry Winter Davis resolution?

Mr. TELLER. Yes, the Henry Winter Davis resolution. It is as follows:

Resolved, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of new powers as in other matters, and it is the constitutional duty of the President to respect that policy not less in diplomatic negotiations than in the use of the national force when authorized by law.

That was carried by 118 votes to 8, and the distinguished Senator from Iowa who sits in front of me was one of those who voted affirmatively, and I find certain other gentlemen with whom I have served in this body who also voted for it. I desire to say to the Senator that I am not expressing any opinion on the point myself.

Mr. SPOONER. I am quite familiar with that resolution. That was a revolt by Mr. Davis against President Lincoln and Mr. Seward. It was during the war. It was a mere expression of opinion on the part of the House of Representatives, and it was evoked by a dispatch from Mr. Seward to the French minister. It was a quarrel between Mr. Seward and Mr. Henry Winter Davis, who at that time was chairman of the Committee on Foreign Affairs of the House.

That the Congress of the United States are unwilling, by silence, to leave the nations of the world under the impression that they are indifferent spectators of the deplorable events now transpiring in the Republic of Mexico, and that they therefore think fit to declare that it does not accord with the policy of the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European power.

That is the resolution as first introduced by Mr. Davis.

In consequence of an article in the *Moniteur*, the official journal of the French Government, the House on May 23 requested the President to communicate "any explanations given by the Government of the United States to the Government of France" respecting this resolution. President Lincoln in turn, on May 25, communicated to the House certain correspondence between Mr. Seward, the Secretary of State, and Mr. Dayton, the minister to France (page 2475).

Mr. Seward writes that the French minister having asked an explanation of the resolution, he inclosed it, with the statement that it "truly interprets the uniform sentiment of the people of the United States in regard to Mexico."

That was little more than a new declaration of the Monroe doctrine, and was aimed at the French interposition by occupation in the affairs of Mexico while we were struggling for the life of the Republic.

Mr. Seward, who was a very able lawyer, I think it will be admitted, a great diplomat, a man whose memory is fragrant and will always be for the wonderful skill he displayed on many occasions in circumstances of extreme embarrassment, in a dispatch said as to the resolution:

It is, however, another and distinct question whether the United States would think it necessary or proper to express themselves in the form adopted by the House of Representatives at this time. THIS IS A PRACTICAL AND PURELY EXECUTIVE QUESTION, AND A DECISION OF IT CONSTITUTIONALLY BELONGS, NOT TO THE HOUSE OF REPRESENTATIVES NOR EVEN CONGRESS, BUT TO THE PRESIDENT OF THE UNITED STATES.

But it made trouble in the House. It generated bad blood. There was factional disturbance there. There was hostility to Mr. Lincoln. We wonder at this day that there ever could have been any, as we will wonder some day, looking back on this day, that there could have been uttered some of the criticisms which have been heard here upon President McKinley.

About it Mr. Blaine said:

To adopt this principle is to start out with a new theory in the administration of our foreign affairs, and I think the House has justified its sense of self-respect and its just appreciation of the spheres of the coordinate departments of Government by promptly laying the resolution on the table.

That is what the House first did with it.

Mr. TELLER. The first resolution?

Mr. SPOONER. No; this resolution. That is what the House first did with it. Thereupon, you remember, Mr. Henry Winter Davis, feeling himself affronted, resigned his position as chairman of the Committee on Foreign Relations, and afterwards the resolution was amended and adopted by the House.

Mr. PLATT of Connecticut. Passed to heal the breach.

Mr. SPOONER. Passed to heal the breach, passed to prevent further division in the face of war, but only at best an expression of opinion upon the part of the House. Allow me for a moment to refer to the case of *Kennett et al. vs. Chambers*, decided by the Supreme Court of the United States, 14 Howard, 30.

The case fairly involved the question when Texas was recognized by the United States Government as an independent State. The court say, through Chief Justice Taney:

But it has been urged in the argument that Texas was in fact independent and a sovereign state at the time of this agreement, and that the citizen of a neutral nation may lawfully lend money to one that is engaged in war, to enable it to carry on hostilities against its enemy.

It is not necessary in the case before us to decide how far the judicial tribunals of the United States would enforce a contract like this when two states acknowledged to be independent were at war and this country neutral. It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent state was a question for that department of our Government EXCLUSIVELY which is charged with our foreign relations.

Has anyone ever heard before now that the Congress of the United States is charged with the conduct of our foreign relations, to present in the form of a *statute*, an ultimatum to a foreign government? The argument against any such possibility is made absolutely unanswerable by Justice Story, by Mr. Pomeroy, and by others in their explanation of why the President, not Congress, was invested with this power, which requires unity, secrecy, dispatch. I am quite sure that if it were vested in the Senate there would not be much secrecy about it. What does the court further say?

And until the period when the department recognized it as an independent State, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory. And if we undertook to inquire whether she had not in fact become an independent sovereign State before she was recognized as such by the *treaty-making power*, we should take upon ourselves the exercise of political authority, for which a judicial tribunal is wholly unfit, and which the Constitution has conferred exclusively upon another department.

This excludes Congress.

Mr. HALE. Will the Senator from Wisconsin allow me to call attention to an instance in our history that is precisely in point? When, in 1837, a resolution was before the House of Representatives acknowledging the independence of the Republic of Texas, on motion it was amended by adding to it "whenever the President in his discretion shall deem it advisable to so recognize it."

Mr. SPOONER. I have all that in this memorandum. And so again with the recognition of the independence of Texas. A resolution was introduced in the Senate recognizing independence. It was merely an expression of the sense of the Senate, just as the Senate resolution recognizing Cuban belligerency was an expression of the sense of the Senate.

In the debate upon the resolution on July 1, Mr. Preston said "that he had with difficulty restrained himself from offering an amendment to recognize the independence of Texas immediately." Mr. Webster said:

"He was willing to go so far as to vote funds to enable the President to send out a proper minister."

I admit that that is the exercise of a legislative power, and that incidental to it is the recognition.

But against a DIRECT RECOGNITION he thought there existed strong objections. It was the proper function of the President to take the lead in this matter.

Mr. PASCO rose.

Mr. SPOONER. I beg my friend not to interrupt me, for I must get through.

Mr. PASCO. If the Senator will permit me, suppose the pending joint resolution passes with the amendment offered by the minority, and the Executive signs the joint resolution.

Mr. SPOONER. I will get to that.

Mr. PASCO. But it passes the two Houses. Would not that be a valid recognition of the independence of the Republic of Cuba?

Mr. SPOONER. I doubt it. I do not think it would be. That would not, without further action by the President, bring about or authorize any intercourse between the two. And suppose Congress should pass such a measure, and the President should receive a minister from the Republic of Cuba, and four weeks from now, or five months from now, Congress not being in session, Spain should receive assistance and should expel that government and resume her sway in Cuba, would this act of Congress, which it is

asserted Congress has the power to pass, simply declaring a fact, be binding on anybody?

Would it be overturned as an act of Congress and rendered of no effect as a rule binding upon the President by successful operations rendered after its passage in the Island of Cuba? Ordinarily, as I stated a few moments ago, any act which Congress has the power to pass, being signed by the President, is binding upon the President and upon the country until Congress repeals it. But the matter of recognition of independence, being dependent upon the varying fortunes of battle, one fact this month and possibly another next month, in the very nature of things that can not be a legislative function.

Mr. PASCOT. I wish to suggest to the Senator from Wisconsin that we are legislating and the President is acting for the present and not for the future, and when future changes come, then will be the time to consider what action is to be taken in reference to future changes.

Mr. SPOONER. That is true as to law. When you pass a law, it stays there until you repeal it, does it not?

Mr. STEWART. The Government will keep a minister there if Congress recognizes the republic.

Mr. SPOONER. It can not keep a minister there if the government to which we send a minister is in the meantime, while Congress is not in session, destroyed; and if a new government is erected, one for which Congress has not provided a minister, is it to be said that the President of the United States may not recognize that new government by receiving from it a minister? In the very nature of things it is a power which was intended to be lodged with the Executive, and it must be lodged with the Executive in order to subserve the interests of our people.

But, Mr. President, it can not be lodged in both places. If it is a legislative power, the President has no right to exercise it. If it is an executive power, Congress has no right to exercise it. It can not very well be both.

I wish I had time to read from Mr. Madison, in one of the Helvidius letters, an absolute demonstration of this proposition. Senators say that it is a legislative power. Do Senators deny, then, to the President the power, beyond the reach of review by Congress, to recognize the Cuban Republic to-morrow? No one will deny that.

But does he do it in the exercise of legislative power? No; he does it in the exercise of an executive power. Now, which is it? Is it both? If it is both, we have this situation: We have Congress declaring a fact which the President, acting upon his oath, declares is not a fact. What then? We have a conflict which the Supreme Court of the United States in *Suffolk vs. Williams* say could not be tolerated between any of the departments of this Government.

But I can not argue longer the question.

Now, this brings me to just this situation, and I beg the attention of Senators to it for a moment: It will be admitted that never since Hamilton wrote the words which I have read in the presence of the Senate has there been a President or a Secretary of State who has not denied that this is a legislative function.

Mr. BACON. Will the Senator from Wisconsin permit me to correct him?

Mr. SPOONER. Presidents once or twice, I think, where it

has been thought that the recognition involved international relations which might involve war, invited the cooperation of Congress.

Mr. BACON. I will not seek to interrupt the Senator now. I will make my statement later.

Mr. SPOONER. The only ground that is logical at all for those who maintain the opposite of the proposition is that maintained by the Senator from Georgia, who says it is a legislative power and that the President exercises it only by the implied consent of Congress. Do I state it correctly?

Mr. BACON. I beg the Senator's pardon; I did not know he was addressing himself to me.

Mr. SPOONER. I say there is no logical ground upon which the counter-contention may be put except that suggested in a speech by the Senator from Georgia, who insisted, as I recollect it, that it is a legislative power, and that when the President exercises it he does it only by the implied assent of Congress.

Mr. BACON. The Senator is correct.

Mr. PASCO. Implied or actual assent?

Mr. SPOONER. Mr. President, that runs afoul of the pretty well settled proposition that legislative power can not be delegated. Congress can not delegate expressly or by consent to the President any legislative power.

Mr. BACON. Will the Senator permit me, in order that I may not be misunderstood (as he asked me the question and then seeks to draw a conclusion), to state what I mean when I speak of it as an implied assent? I will do it by illustration. The President, under certain circumstances, might order a war ship to bombard a town.

Mr. SPOONER. I think he will.

Mr. BACON. Very well. If Congress saw fit to do it, it could countermand the order. When I say Congress I mean the law-making power.

Mr. SPOONER. Mr. President, I deny it.

Mr. BACON. Wait a moment.

Mr. SPOONER. Congress has power to declare war, but the President of the United States is Commander in Chief of the land and naval forces of the United States.

Mr. BACON. I am not speaking of a time of war.

Mr. SPOONER. Oh!

Mr. BACON. I am speaking, for instance, of such an act as the bombardment of Grey Town.

Mr. SPOONER. Yes.

Mr. BACON. That is what I am speaking of. There is no doubt of the fact, and the Senator, I presume, will not deny it with as much vehemence as he did just now, that if Congress had been in session and had known of the President's determination, Congress, by law, could have stopped that war ship from making that bombardment. In not doing so there would have been an implied assent by Congress to such an act on the part of the President.

Mr. SPOONER. That is, Congress by its silence ratified a usurpatory act on the part of the Executive. Is that what the Senator means?

Mr. BACON. No; I do not mean a usurpatory act at all, but I do say it was an act which it was within the power of Congress to have denied to the President, and when it was not denied there was

the implied assent. I used that simply by way of illustration to deny the conclusion of the Senator that there is any argument on my part looking to a delegation of legislative power on the part of Congress to the President.

Mr. SPOONER. The Senator in his speech, which was a very able and ingenious speech, did not say that in terms, of course. I beg pardon for what seemed to him to be vehemence; it is a fault of my manner, and only that; but what I say is that the Senator's argument seems to me to involve a delegation of legislative power, which, of course, is inadmissible.

Now, Mr. President, whatever else may be said about it, for the purposes of the appeal which I wish to address now to the Senate we will call it a disputed proposition. Many men of ability think and have argued one way and many of equal ability have thought and argued the other way. All the Presidents, with an exception or two, and President Jackson reserved the question, have thought the other way and insisted the other way.

It becomes an important matter to-day. It is on this occasion not an abstraction. The President in the message which he has sent to Congress, and no one will question the sincerity of his utterance, and no one will question the facilities which he has had at his command to ascertain the fact, has declared it to be his conviction that as a fact there is no Republic of Cuba which is entitled upon the principles of international law to be recognized as an independent power.

Now, we are asked to pass a resolution—a joint resolution—to be sent to him asserting a contrary fact, and coupled with it a power which all the people of the United States want given to the President, and which he has asked, in an exigency demanding haste, upon humanitarian and other grounds—is it a good time, Senators, is it a good time for sober-minded men to force this issue?

Is it a fair proposition when the President, acting within his sphere, decides the question of fact one way and notifies us in his message of his decision that we should decide it another, and under cover of a momentous exigency like this we should call upon him to sign a resolution contradicting the fact as stated by his message and surrender a prerogative upon the demand of Congress, a prerogative which he thinks is executive and which all the Presidents, from Washington down, have considered executive? Whatever may be the law of the matter, I hope Senators will agree that this is not a good time nor a fair way to force from the Executive an assertion, or a surrender, of the long-claimed and exercised prerogative.

Mr. STEWART. Will the Senator allow me to ask him a question?

Mr. SPOONER. Certainly.

Mr. STEWART. Have we not got a right to examine the conditions upon which we will declare war? Is it not our duty to do so? And if the conditions are not such as we think would warrant war, are we bound to vote for war? Have we not a right to determine under what conditions war ought to be declared? It seems to me that we have that question before us.

Mr. GRAY. Not necessarily.

Mr. SPOONER. I do not see that that has any necessary connection with the observations which I am submitting to the Senate.

Mr. STEWART. If the fact does not exist that there are any

local rights there and no government of any kind, I do not know what right we have to go there and commence war.

Mr. GRAY. I will say to the Senator from Nevada and the Senator from Wisconsin that we are interfering on distinctly different grounds, if we interfere at all. If it is a necessary war measure, it will be for the Commander in Chief when war is declared to exercise the power.

Mr. SPOONER. That is true. Mr. President, I object to the recognition of independence upon another ground. I object to it because upon principles of international law there is no government in Cuba, so far as we have any information of it, which is entitled to be recognized as an independent state. As I said a little while ago, independence is a fact. What is the rule upon the subject? There are a great many authorities upon it and a great many precedents. The elementary books are full.

Mr. STEWART. I deny our right to go anywhere and establish a government unless we annex the country. As to establishing a government for somebody else, I deny our right to do it.

Mr. SPOONER. Mr. President, we do not propose to go anywhere and establish a government, nor do we propose to annex Cuba; nor do we propose in any way to absorb Cuba; nor do we propose to apply to the purposes of the United States one penny of Cuban revenue. Our purposes are far above that. We intervene, if we go there, in the affairs of Cuba for what purpose? We intervene to put an end to savagery. We intervene because the continued rule by Spain in Cuba menaces our peace. We intervene because, as a Christian nation at the end of the nineteenth century, we can not stand it any longer in the sight of God. That is why we intervene. We go there, Mr. President, and we will, of course, take the side of the insurgents.

Mr. STEWART. That is not what you say.

Mr. SPOONER. I do say so, and the Senator never doubted for a moment that I would say so. I think no man, unless he is blinded by party zeal, unless he seeks in this moment of supreme peril to find fault with an Executive, would doubt for a moment that that is one purpose of our intervention, and that its effect will be Cuban independence.

Mr. STEWART. I want the resolution to say so. That is what we are discussing.

Mr. SPOONER. I am advocating the adoption of a resolution which does say so, and you are advocating the adoption of a resolution which says they are already independent.

In the message of the President is the doctrine in regard to this subject declared by President Jackson, and although he sent a Chargé to Texas, having approved the bill which provided the salary and so forth, that did not in anywise indicate a change of opinion as to what was required as evidence within the rules of international law to warrant a recognition of independence.

Mr. MASON. The Senator will admit, however, that it was one case where the legislative action preceded the executive action.

Mr. SPOONER. That has often happened. If we should pass a bill to-day appropriating money to pay the salary of a minister to the Republic of Cuba, and two weeks from now the President should recognize the Republic of Cuba, the executive action would follow the legislative action just as it did in the other case. But that would not change the doctrine of international law at all. That would not make any change in the principle that cer-

tain facts must exist in order to warrant a recognition of independence.

As stated in the very able report of the Committee on Foreign Relations, written by its distinguished chairman [Mr. DAVIS]—who I hope may long remain a member of this body, in which he renders exceptional service to the country and sheds luster upon the great State which sends him here—intervention is a matter of high politics.

Every State must determine for itself when it will intervene and to what extent it will intervene. But on the principles of international law this matter of independence is a matter of right.

If a people in fact have established such a government as within the principles laid down by President Jackson constitutes them a state, it is entitled to recognition. Different principles apply to the exercise of the right of intervention from those which apply to the exercise of the right of recognition. This is laid down in the seventh annual message of General Grant, and I believe it to be a fair statement as to what is necessary to warrant the recognition of a state.

To establish the condition of things essential to the recognition of this fact—

Because it is only a fact—

there must be a people occupying a known territory, united under some known and defined form of government acknowledged by those subject thereto, in which the functions of government are administered by usual methods, competent to mete out justice to citizens and strangers, to afford remedies for public and for private wrongs—

It would not be safe to admit a new member into the family of nations with any less than these requirements. It would not be able to protect its own people. It would not be able to discharge its international obligations. States are particular about this, because governments have to deal with each other; and when they recognize a government, from that moment it is an equal, whatever its size or power; and they must see that it is a government capable of discharging the functions of a government both at home and abroad, capable of playing its part as a member of the family of nations; and there is no work on international law which does not declare that it is a delicate office and should be exercised with the utmost care and discretion. Let me continue what I was reading. I had not finished it—

and able to assume the correlative international obligations, and capable of performing the corresponding international duties resulting from its acquisition of the rights of sovereignty. A power should exist complete in its organization, ready to take and able to maintain its place among the nations of the earth.

Sir Edward Creasy says, page 679:

Speaking generally, two facts should concur before this grave step [that of recognizing the new state against the wish of the old state be taken]:

1. The practical cessation of hostilities on the part of the old state, which may long precede the theoretical renunciation of her rights over the revolted member of her former dominion.

2. Then should occur the consolidation of the new state, so far at least as to be in a condition of maintaining international relations with other countries, an absolute bona fide possession of independence as a separate kingdom, not the enjoyment of perfect and undisturbed internal tranquillity—a test too severe for many of the oldest kingdoms. But there should be the existence of a government, acknowledged by the people over whom it is set, and ready and able to prove its responsibility for their conduct when they come in contact with other nations.

Again:

It has been pointed out in an early portion of this volume that a state, in order to be entitled to take its place in the great family of sovereign political societies, must not only be free from government from without, but it must govern itself. The sense and necessity of this rule are too obvious to require any comment.

I do not understand why there is such haste for recognition of a government in Cuba.

It will not be long after the flag of the United States is carried to the Island of Cuba when the people there who sympathize with the army of Gomez will rally around him—it will not be long—and if the people of Cuba recognize, as they will, if they think they ought to, this revolutionary or provisional government with its constitution, as a government under which they wish to live, it is for them to say so; and the President promptly can and promptly would recognize it and admit it into the family of states so far as we are concerned. If, on the other hand, for any reason, its people should not wish to live under its constitution, to be decided by them, not by us; if they prefer, by a fair expression of their opinion, another government with a different constitution, it is for them to say, not for us; and when such a government shall have been erected by them, not by us, and it raises its flag—and it doubtless will be the flag under which Maceo died and Gomez fights—then it will be for us to recognize its independence and to stand by it.

The Senator from South Carolina [Mr. TILLMAN] talks about the carpetbagger. That was a grievous trouble to your people, but it was not willingly put upon you. It was an outgrowth of a condition, happily gone, and now only recalled as part of history. We would have been glad if it could have been avoided. None of us denied the evils of it; and the Senator surely does not suppose for a moment that the United States intervening here by force of arms upon high grounds—so high that no government will question its purpose; and I regret that any Senator has seen fit to challenge it—will send there an army to install as governors, as chieftains, as tax collectors, carpetbaggers from the United States. No, no.

Mr. TILLMAN. Will the Senator allow me?

The VICE-PRESIDENT. Does the Senator from Wisconsin consent to be interrupted?

Mr. SPOONER. Of course.

Mr. TILLMAN. I am glad to hear what I did not doubt the Senator from Wisconsin would deny, and I dare say all the Senators here will deny, that there is any such purpose. I hope none such exists; but why not let us make plain and clear what this resolution means, so that such a condition shall not exist under any temptation that may come?

Mr. SPOONER. The House of Representatives has passed a resolution providing for this intervention and for an independent government of the people of Cuba. I favor it. Here it is:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and directed to intervene at once to stop the war in Cuba, to the end and with the purpose of securing permanent peace and order there and establishing by the free action of the people thereof a stable and independent government of their own in the Island of Cuba; and the President is hereby authorized and empowered to use the land and naval forces of the United States to execute the purpose of this resolution.

Is not that enough? I do not like the word "directed."

Mr. TILLMAN. But who is going to interpret that?

Mr. SPOONER. It does not need any interpretation. It interprets itself.

Mr. TILLMAN. Will the Senator interpret this language for me from the President's message—

Mr. SPOONER. I am not discussing the President's message. We are not going to vote upon the President's message.

Mr. TILLMAN. It is the President's message alone which has given me the painful duty to perform of speaking as I have to-day; and but for the fact that that message has been written and given a tail which does not correspond with its body and head, I never would have uttered a word that I have uttered to-day.

I want to ask you to please tell me what this language means in the President's message; and I do it for the reason that you of all men on either side of this Chamber are possibly better informed, or at least equally well informed, on the question of law involved:

To commit this country now to the recognition of any particular government in Cuba might subject us to embarrassing conditions of international obligation toward the organization so recognized.

Mr. SPOONER. I indorse that, Mr. President, as absolutely sound.

Mr. TILLMAN. I want you to tell me what will be the obligations of an international character to which we will be committed if we recognize the present government of Cuba?

Mr. SPOONER. I will get to that in a few moments.

Mr. TILLMAN. I will, then, wait until the Senator reaches it.

Mr. SPOONER. I will endeavor to satisfy the Senator, if I can. Our own Supreme Court say, in *Kennett vs. Chambers*, referring to Texas:

But it belonged to the Government, and not to individual citizens, to decide when that event had taken place (independence), and that decision, according to the laws of nations, depended upon the question whether she had or had not a civil government in successful operation, capable of performing the duties and fulfilling the obligations of an independent power. It depended upon the state of the facts and not upon the right which was in contest between the parties.

Lawrence says, page 87:

The community thus recognized must, of course, possess a fixed territory, within which an organized government rules in civilized fashion, commanding the obedience of its citizens and speaking with authority on their behalf in its dealings with other states.

It is not enough to warrant the recognition of a government as an independent power that it has a written constitution; it is not enough that it has passed laws or made orders; it is not enough that it has adopted a postage stamp; it is not enough that it has chosen a president who is as able and dignified as the President of the United States; it is not enough that it has chosen a vice-president who is a professor of law. That is all very well, but that is not enough. It requires more than a paper government; it requires a government in fact; it requires a government that governs at home and punishes crime through the operation of judicial tribunals; that protects property; that levies taxes. A Senator near me suggests, and one that has a fixed abode. I do not care so much about that. It must be a government, Mr. President, in fact—and that must be made clearly to appear—which not only performs all the functions of a government at home, but is able to perform all the functions of a government in its relations to other governments.

I take liberty to read a word from Sir William Vernon Harcourt. Senators will remember these letters, for they were written during the late war upon the question of recognizing the independence of the Southern Confederacy, and attracted great attention on both sides of the Atlantic.

While the issue can be still considered in any degree *in ambiguo*, the presumption is necessarily in favor of the former sovereign, and a friendly state is bound to exact very conclusive and indisputable evidence that the sovereignty of a government with which it has existing relations over any part of its former dominions has been finally and permanently divested. It is not at liberty during the pendency of an actual struggle to speculate on the result or to assume the probability of the ultimate failure of the ancient sovereign, however plausible may be the grounds for such an inference. What the claimant to recognition has to show is an accomplished and *de facto*, not a probable or *paulo post futurum*, independence.

Then he says again:

The rule he propounded was precisely that acted upon by Mr. Canning in the case of the South American Republics, viz, that where a doubtful and bona fide struggle for supremacy is still maintained by the sovereign power, the insurgents *jam flagrante bello* can not be said to have established a *de facto* independence.

Mr. TILLMAN. Will the Senator allow me?

Mr. SPOONER. Then he says in another place, if my friend from South Carolina will permit me:

When a sovereign state, from exhaustion or any other cause, has virtually and substantially abandoned the struggle for supremacy it has no right to complain if a foreign state treat the independence of its former subjects as *de facto* established; nor can it prolong its sovereignty by a mere paper assertion of right.

No mortal man can say because of the military methods employed in Cuba that the struggle existing between Spain and Cuba could be brought to an early end without the intervention of the United States.

Mr. TILLMAN. Now will the Senator allow me?

Mr. SPOONER. Yes, sir.

Mr. TILLMAN. If France had assumed that attitude toward the colonies, where would this Republic be?

Mr. SPOONER. There is nothing novel about that.

Mr. TILLMAN. France, if you will excuse me again—I beg the Senator's pardon, but I just want to make one observation—if France had not established a precedent contrary to that doctrine, we would not have gained our freedom; and if we need a precedent, in God's name let us establish one.

Mr. SPOONER. When France recognized the struggling American Republic, she did not do it so much for love of us as she did it because of her hatred against Great Britain.

Mr. TILLMAN. Have we not enough cause for hating Spain?

Mr. MASON. If the Senator will permit me, I wish to ask a question.

Mr. SPOONER. Certainly.

Mr. MASON. Do you think France hated England then any more than the American people hated Spain the day after the *Maine* went down?

Mr. SPOONER. We are not going to war with Spain for hate.

Mr. MASON. I am.

Mr. SPOONER. You are, but I am not.

Mr. MASON. That is one of my reasons.

Mr. SPOONER. The American people are not going to war with Spain for hate. Seventy millions of people, with illimitable wealth, proud of being a Christian people, will not wage war

against any government on the earth for hate. We are going to war with Spain because we must; we are going to war with Spain because we can not tolerate any longer Spanish rule in this neighboring island; we are going to war with Spain because we can not any longer listen to the cries, which come floating over the sea upon every breeze from Cuba, of starving children and starving women; we are going to war with Spain, forced into it by her, because her rule in Cuba has for many a long year menaced our safety, and because we can not tolerate it any longer; but there is no hate in it, no revenge in it. We are going over there to abate a nuisance. [Laughter.]

Mr. MASON. The Senator does not love the country that made the nuisance, does he?

Mr. SPOONER. Mr. President, I am not here at this hour and in this high place to hurl epithets against the nation with which we are to fight or to express what I may have in my heart toward her by vituperative language. She will have to settle. The day of reckoning has come; our bill of particulars has been presented; it is a long list and a sickening list, and the destiny of Cuba at last will be worked out.

Why, Mr. President, one of the grounds on which the United States refused to participate in the alliance proposed a great many years ago, while Mr. Everett, I think, was Secretary of State—I have forgotten the year—invited by France and Great Britain, on the application of Spain, to maintain permanently the Spanish *status* in Cuba, was stated to be that the Administration would be utterly odious to our people which would enter into a contract with those Governments that the Cuban people should not at some time obtain their independence.

I do not put the action of the United States upon any such ground as my friend does, although I know his aspiration and his love of liberty and his sympathy with all who struggle; but I venture to say that with his heart full of tenderness for the Cubans in their sufferings and struggles, it is no more tender in its sympathy for them than are the hearts of those of us who have sat silent in this Chamber during all the months that the President has been walking alone the difficult and wearisome path which has led up to this hour.

Mr. President, it is true that France recognized the Republic, but we then had a good deal of a government. We had George Washington, and he was a good deal of a government; we had the Continental Congress; we had laws; we had institutions. Our seat of Government changed now and then; but that is nothing. We had whipped Burgoyne at the battle of Saratoga.

Mr. ALDRICH. We captured him.

Mr. SPOONER. Yes, defeated him and captured him. To illustrate the real attitude and purpose of France, she made a treaty of commerce with us, and it was upon that ground that the English Government declared war against her and the English statesmen to this day denounce that treaty as a violation of international law upon the subject of recognition; but she also made a secret treaty of alliance with us, in which it was provided that neither Government should make peace with Great Britain without the consent of the other.

Mr. President, in every court of Europe the agents of the Southern Confederacy patiently, earnestly, and prayerfully sought the recognition of independence. In every court of Europe the

representatives of the United States as earnestly antagonized it, demanding, upon principles of international law, that it could not be properly accorded. Every Government of Europe except Russia was unfriendly to us and sympathized with the Confederacy.

I think that statement is fairly justifiable—perhaps not as to Germany, but as to most of those governments—and not one of them recognized the independence of the Confederate States. This book is full of utterances by English statesmen giving the reasons why they could not, in harmony with international law, admit by their action the Southern Confederacy into the family of states.

What was the case of the Southern Confederacy? They had a government; they had a president, known the whole world over; they had a cabinet; they had a congress which enacted laws; they had States, each was a sovereignty and enacted laws; they administered justice through established courts; they had ships upon the sea which carried their flag into every neutral port under the sky; they had an army in the field commanded by great generals; they issued money; they had "postage stamps."

Mr. TILLMAN. The Cubans have postage stamps, too. [Laughter.]

Mr. SPOONER. That is all. That government was so strong, Mr. President, that there were times when the changing tide of battle made the stoutest hearts of the North doubt. It took over 2,000,000 of men to prevent that government from achieving recognition; and I have sometimes thought that if the battle of Gettysburg, which was the pivotal battle of the war, had gone against us it might—

Mr. ALDRICH. Oh, no.

Mr. SPOONER. I say it might have secured a recognition of the independence of the Southern Confederacy by some governments abroad. That would have prolonged the struggle, but it would not have changed the result. Compare the situation of the Confederacy in that day with the condition of Cuba and the precedents set by the nations of the earth upon our demand and in our interest. We are all friends now; there is only one flag now, and that is the flag which is going to Cuba; there is only one Government now, but we can not forget—we have no right to forget—that upon our demand upon principles of international law, which you find asserted everywhere by the representatives of the United States, the governments of Europe refused to recognize the independence of the Southern Confederacy.

Mr. MONEY. Will the Senator permit me to ask him a question?

Mr. SPOONER. Certainly.

Mr. MONEY. I want to ask the Senator this question: If any one of those European powers at the time the Southern Confederacy was soliciting an acknowledgment of its independence had desired to terminate the war here, and had then concluded to acknowledge the independence of the Confederate States, what would the Senator say of international law on that case? Could they not have done that if they had taken the attitude that you occupy to-day of putting an end to the contest?

Mr. SPOONER. That question was discussed, and it is discussed by "Historicus" in this book.

Mr. MONEY. I am not talking about that book. I am asking

the Senator for his own opinion. Allow me again to ask if any European government had seen fit to declare that it intended to stop the war between the Federal and the Confederate States whether or not as a preliminary they would not have acknowledged the independence of the Southern Confederacy? Does the Senator believe that or not?

Mr. SPOONER. That would have been for them to decide, and so we have the power——

Mr. MONEY. It is for us to decide to-day.

Mr. SPOONER. Certainly it is for us to decide. I am only arguing that upon principles of international law and upon a principle which was settled by the governments of Europe upon our demand, we ought not to violate that precedent, but that we ought to stand by it.

Mr. DANIEL. Will my honorable friend allow me to ask him a question? He is, I think, making a very interesting speech.

Mr. SPOONER. I feel guilty, if my friend from Virginia will allow me to say so, that I have already spoken so long.

Mr. DANIEL. It has seemed very short to us.

Mr. SPOONER. That is very kind.

Mr. DANIEL. I wanted to call the attention of my honorable friend, whose ability as a lawyer I know full well, to the fact that his statement overlooks, as it would seem to me, the point as to which recognition would be accorded and the point mentioned in the President's message. And that is this: That when the danger line against a resubjugation is gone, then it is time to recognize. The danger line of the Southern Confederacy never did go, and, existing, no government recognized her. Has not the danger line as to the resubjugation of Cuba gone the moment our flag floats to the sky?

Mr. TILLMAN. The President himself acknowledges that.

Mr. SPOONER. Answering the question of the Senator from Virginia [Mr. DANIEL], it is enough to say that the danger line has not gone now.

Mr. DANIEL. I think it is pretty well gone now, when the President says it has gone.

Mr. SPOONER. I am no blind follower of any man. We are to deal with this question as Senators, and to do about it what we think is right in the interest of the country and in harmony with general principles. When we shall have intervened, when the danger line is gone, as it will be gone soon, the question will solve itself.

Mr. President, there are very good reasons, and I think very strong reasons, why we should adhere strictly to the evidence required of the existence of the elements essential to entitle a state to recognition in this case. One of them was stated by the Senator from Massachusetts [Mr. HOAR] in the masterful and eloquent address which he delivered yesterday, and that is, that the eyes of Europe are upon us. To-day, so far as we can see, most of the Governments of Europe, for whose friendship we should care, look with approval upon the conduct of this case up to this hour.

Almost every one of those governments has far distant colonies, colonies which are liable to insurrection, and therefore it is that those governments are all interested that a great Republic like this should at least stand by the principles which they have adopted upon our demand, and should not recognize with undue haste a provisional government of insurgents. That is a propo-

tion which is a matter of interest to every foreign government which has outlying colonies.

We can not afford to signalize our entry upon war by violation of international law. We can not afford to be wrong, Mr. President. Nations have reputations to gain and lose at the bar of public opinion as well as men have reputations to gain and lose at the bar of public opinion in a narrower sphere. The world is very small in this day. Everything that is done in one part of the world is known the next day in every other part of the world.

Almost every thought expressed in one part of the world is read at breakfast the next morning in the newspapers of every other country; and the Government of the United States, strong, powerful, illimitable in its resources, can not afford to violate in this exigency any principle of international law. Let us hew to the line. What difference does it make to Cuba whether a republic is recognized there to-day or ninety days from to-day? They have been struggling for freedom, and freedom is coming.

Like the negroes' millennium, it "has been a long, long time on the way," but it is coming. They have been struggling for a flag of their own to float upon the island in place of the Spanish flag. It will go up, and I hope, Mr. President, it will go up to stay. I hope Cuba—the Republic of Cuba, if that shall be the name—will be an exception to the attempts of that race throughout the world to establish governments. I hope it will be stable; I hope it will be free from revolution.

I hope that coup d'etats of struggling chieftains will be strangers to them—I hope so; I wish I knew it—but it is a small matter to Cuba and the Cubans whether the independence of a government there is recognized to-day or three months hence. It is a matter of larger consequence to us whether we set a bad example and violate the principles of international law in recognizing a government which we all think on these principles is not entitled to recognition. All the President states—and the Senator from South Carolina read it a few moments ago, and I wish I could turn to it—

Mr. TILLMAN. I will furnish it to the Senator.

Mr. SPOONER. On what page?

Mr. TILLMAN. On page 10.

Mr. SPOONER. It is as follows:

To commit this country now to the recognition of any particular government in Cuba might subject us to embarrassing conditions of international obligation toward the organization so recognized. In case of intervention our conduct would be subject to the approval or disapproval of such government. We would be required to submit to its direction and to assume to it the mere relation of a friendly ally.

Does anyone doubt that?

Mr. TILLMAN. The mere relation of friendly ally is all we are struggling for on this side.

Mr. SPOONER. We are going to be a friendly ally, not of any provisional government, but of the people of Cuba.

Mr. TILLMAN. The people of Cuba certainly are not as much the government as the government which the Senate recognized by resolution last year.

Mr. SPOONER. We are not going to war, with all its burden of taxation, with all the desolation it will carry into the homes of our country, with all its waste, for war is waste, with all its bloodshed and all its horrors, to elevate any particular crowd of men to

power. We are going to war because we must, and a result of it shall be freedom and independence to the people of Cuba.

But the President, in my judgment, is absolutely correct when he says that we should not go there shackled by international relations too soon created by us. When we recognize this provisional government as an independent republic what business have we there except by its invitation? The moment it is recognized by us it is, so far as we are concerned, an independent and equal government. Are we invited? What right have we to stay there an hour except upon terms prescribed by it?

Mr. TILLMAN. If the President will send for this gentleman who has been sent here and lying around here for three years trying to get recognition, I am sure he would beg us to go there with tears in his eyes.

Mr. SPOONER. I am sorry my friend should accuse anybody of lying around here for three years. [Laughter.] I beg my friend's pardon. I think there has been some of it. I do not know to whom he refers.

Mr. TILLMAN. I am speaking about the envoys of this so-called government.

Mr. SPOONER. We have not recognized any envoys of this so-called government.

Mr. TILLMAN. I know we have not, but the Senator said we had not been invited to Cuba, and I say if we will just send for that man and tell him that we recognize the government, he will ask us to go there, and he has been ready to do so at any time within the past two or three years.

Mr. SPOONER. It is not very long since I read in the paper an elaborate interview with the counsel of the so-called Republic of Cuba—

Mr. TILLMAN. The counsel of the junta.

Mr. SPOONER. The junta has been, so far as we know and so far as the world knows, the civil political government of the so-called Republic of Cuba. They are the people we have heard from, and it is a part of the laws of the so-called Government of Cuba that Mr. Estrada Palma, if that is his name—

Mr. TILLMAN. I beg the Senator's pardon. I do not know it.

Mr. SPOONER. It is a part of the laws of the so-called Government of Cuba that he is authorized to issue bonds of the so-called Republic of Cuba without any limit and to issue paper money of the so-called Republic of Cuba without any limit. Whether or not he has done it and to what extent I do not know. He may have issued millions for aught I know.

Mr. TELLER. I doubt whether the Senator can establish that statement.

Mr. SPOONER. I have not charged it.

Mr. TELLER. I understood the Senator to make it.

Mr. SPOONER. I said for aught I know.

Mr. TILLMAN. The only testimony before the Senate is contained in the report of the committee, and in that the treasurer of the Cubans says only some \$100,000 of bonds have been issued.

Mr. SPOONER. I care nothing about that. The grant to Tomas Estrada Palma, delegate plenipotentiary, found on page 36 of Senate Document No. 19, Fifty fifth Congress, first session, is as follows:

Second. To contract for one or more loans, the proceeds of which are to be used in the service of the republic, guaranteeing said loans with all the pub-

He property, land taxes, custom-house duties, present and future, of the said republic, issuing bonds, registered or coupon, for an amount which he may deem convenient, payable, as well as the interest, when he may judge it opportune; empowering him also to determine the nominal value of the bonds, the interest they earn, condition of the payment of the capital and interest which he may consider most favorable in order to place the said bonds at the best price, and also to mortgage them.

Third. To issue paper money in the name of the Republic of Cuba for the amount which he may think necessary and in the form and conditions which he considers most adequate.

Fourth. To issue postage stamps of the denominations which he may consider most convenient for the service of the republic.

This power is conferred upon Mr. Palma by the president and his cabinet, which, under the constitution, is the lawmaking power.

I know nothing as to what bonds have been issued or what money has been issued. I care nothing about it. I referred to it to show how completely the civil government of the Republic of Cuba is wherever Tomas Estrada Palma is, which, I think, is New York.

And he is authorized to delegate these great powers.

I have made no reference to the suspicion that there are bonds of the Cuban Republic in this country. That cuts no figure here. I am not a suspicious man, Mr. President. I am not a pessimist. I am an optimist. I am a pretty general believer in the honesty of men and the goodness of women.

I am not ready to suspect my colleagues or the people with whom I associate. I have lived long enough to know that a man who is always suspecting the integrity of somebody will bear a little watching himself.

Mr. Rubens is reported to have said—I understand it has been qualified, and that is the only invitation we have had, so far as I know, from the so-called Republic of Cuba—that if we went there without first recognizing the independence of this revolutionary party, or the men who on paper are the civil executives of the island, though we came to free them, they would turn their guns upon us. Of course that was explained afterwards by the statement that he supposed we meant annexation. I have no doubt at all that when we go there, they will all flock to our standard—none whatever.

Why should we encumber ourselves in this intervention by recognizing a government of which we know nothing and which, when recognized, will be our equal in treaty-making and other great powers so far as we are concerned? It is stated that they have collected \$400,000 of taxes. Perhaps they have, but a government which in a struggle for liberty lasting for three years can collect only \$400,000 in taxes does not establish a very firm foundation for recognition.

Mr. TELLER. Will the Senator allow me to ask him a question?

Mr. SPOONER. Certainly.

Mr. TELLER. Will he state to us how much money the Continental Congress collected during the contest with Great Britain?

Mr. SPOONER. Not knowing, I can not say.

Mr. HOAR. I can answer the question.

Mr. TELLER. Will the Senator from Massachusetts answer it?

Mr. HOAR. I have seen within a very short time a statement in the handwriting of one of its members of a particular account of about \$27,000,000 received by the Continental Congress from the various States.

Mr. TILLMAN. In continental money, which they themselves issued.

Mr. TELLER. That money was collected by the colonies.

Mr. HOAR. Undoubtedly.

Mr. TELLER. Not by Congress.

Mr. HOAR. The Continental Congress had no power to collect taxes.

Mr. TELLER. They not only collected, but they borrowed money.

Mr. HOAR. That is another thing. The answer to the Senator's inquiry, in substance, not in phrases merely, is that the Continental Congress had no power to collect taxes. Strictly in the way of collecting taxes they collected nothing, but they made requisitions upon the States; and not only did they make requisitions upon the States, but the States expended of themselves the moneys which raised, equipped, and armed the Continental soldiers.

Mr. TELLER. That is true. When the question was whether or not we had a National Government, how could foreign governments determine it if we did not collect taxes? We did collect an infinitesimal amount; I do not know how much; a trifle.

Mr. HOAR. We not only had a National Government, but we had thirteen national governments.

Mr. TELLER. The question was whether we had one National Government.

Mr. HOAR. We were conducting a war by a confederation of thirteen nations, all sovereign, all allied, and all declaring themselves independent.

Mr. SPOONER. The Republic of Cuba, so called, when you look at its constitution, embraces the Island of Cuba from end to end. It is not pretended that the so-called Republic of Cuba has control—and that control is peculiar—of more than two provinces, I think it is. There is another government in Cuba which controls the rest of the island which on paper is "the Republic of Cuba." One of the foundation principles in relation to the recognition of the independence of a state is that it shall have fixed boundaries. Is it not idle to say that the Republic of Cuba is an established government with fixed boundaries? It does not control, so far as I know, a single city. It does not control or hold a single seaport—not one.

My friend, the Senator from Ohio [Mr. FORAKER], said the other day in his very eloquent speech that Switzerland did not control a seaport. Neither does Colorado. Switzerland is in the interior; but here is an island republic, so called; and think of an island republic claiming recognition as a republic which has not a single port nor a ship—not one!

But, Mr. President, the conflict, although it is a peculiar one, is still raging. Is there anyone here bold enough to say that if we leave them alone over there they can expel the power of Spain? The rebellion or insurrection might be continued indefinitely, because they are fighting Spain a good deal on the principle that "Captain Jack" fought the troops of the United States in the lava beds. They do not give open battle.

It is a wise and masterly strategy, but the fact remains that there are 70,000 Spanish troops. There is another fact. Senators say Spain is exhausted—that is hardly true—and if left alone would abandon sovereignty over the Island of Cuba. We are

spending a vast amount of money to prepare the United States to meet an "exhausted country," if she is exhausted. It was said by Sir William Vernon Harcourt:

It is quite clear that one of the most essential elements in the status of the claimant to recognition is that its limits should be intelligibly defined. I do not say that the boundary line need be laid down with scientific accuracy, but at all events that it should be understood in a much clearer manner than it can be yet said to be defined as between the South and the North.

But the war is still going on. I have a letter here from General Gomez, which I wish to read:

Mr. Quesada has a letter from General Gomez, under date of March 9, which shows how hopeful—

Not how assured—

he is of success, and how even then he spoke of the utter futility of attempting negotiations with Spain. A portion of the letter is as follows:

"This province (Santa Clara), as well as Santiago de Cuba and Puerto Principe, is ours. The enemy has departed, ceasing military operations and abandoning the garrison and forts which constituted its base of operations. Days, weeks, and months pass without a column of troops appearing within our radius of action, which is of many leagues. In the conditions in which we are it is my opinion that what we need to end the war quickly are cannon and a great deal of dynamite, so that we can expel them by fire and steel from the towns.

Nobody could live on those devastated plains. Death and starvation have held absolute sway over them.

"Notwithstanding the opinion of the optimists, I adhere to the idea that we will never make Spain come to terms but in that manner—

By guns and dynamite and expelling Spain from the towns—

and that it is a loss of time and very dangerous to enter into any negotiations. We must fight them vigorously and unceasingly in order to force what we will have, and we will surely obtain it in time."

Mr. TELLER. Will the Senator allow me to add to that now what the President says about it?

Mr. STEWART. Read it.

Mr. SPOONER. Yes.

Mr. TELLER. The President, in his message to us, says:

The long trial has proved that the object for which Spain has waged the war can not be attained. The fire of insurrection may flame or may smolder with varying seasons, but it has not been and it is plain that it can not be extinguished by present methods.

Mr. SPOONER. Oh, yes; the fire of insurrection smoldered and flamed in the same way for ten years, but it did not result in the independence of Cuba. It did not result in expelling the sovereignty of Spain. I am told that Mr. Quesada stated before the House Committee on Foreign Affairs that if the United States should not intervene, he thought the insurgents might win their independence in twelve years. But that is not independence now. That is a struggle for independence. That is what General Gomez says in this letter.

But it is said they collect taxes. The "taxes" are levied and assessed in the most arbitrary way by "officers" of the "treasury," and they are enforced under the following "laws:"

ART. I. According to article 18 of the constitution and the decree of the general in chief of the 20th of September last, the military chiefs shall give the necessary aid to the officers of the treasury for the better fulfillment of their duties.

ART. II. With the aid of the armed forces, they will proceed to the destruction of those plantations, whatever be their nationality, which will refuse to pay the taxes decreed by the government of the republic.—*Senate Document No. 19, Fifty-first Congress, first session, page 19.*

That may be all right for a military government, but it hardly answers the requirement in this age of a civil government entitled to recognition as an independent state. It is not a government which, so far as we know, administers law, protects property, or meets out justice through judicial tribunals.

There is another thing about it. General Lee, who ought to know, if anyone should know, what there is to the so-called republic, testified before the Committee on Foreign Relations of the Senate upon this subject. He made some remarks that are not in the testimony, I am told, but he says on page 545:

I have never thought that the insurgents had anything except the skeleton form of a government.

Certainly he had better facilities for accurate observation and knowledge than any of us.

Mr. MASON. Will the Senator permit me to ask him a question?

Mr. SPOONER. Certainly.

Mr. MASON. Did not General Lee also testify that his relations were not with the insurgents; that his relations were with the Government to which he was accredited?

Mr. SPOONER. Of course.

Mr. MASON. And that he could not speak with any knowledge, but only from information as to the Republic of Cuba?

Mr. SPOONER. I know he was not consul-general to the "Republic of Cuba."

Mr. MASON. He will be.

Mr. SPOONER. I should not object to that. Of course his relations were not with the so-called Republic of Cuba, because there was not any government to which we could send a consul. They have no international relations, as the Senator from Massachusetts [Mr. HOAR] says, with anybody. We want better evidence that the people of Cuba have a government capable of discharging international duties and of discharging the functions of government at home before we commit this Government to an admission of it into the family of nations. But General Lee has had vastly better opportunities for learning what there is to this government than any of us.

I can not escape the conclusion that if we go there, having first recognized the independence of the so-called republic, recognizing their equality with us as a treaty-making power and otherwise, we go there under its "laws," subject to its orders, to act under its commanders, and if, when we shall have driven away the Spaniard from the island with their assistance, they bid us go, upon what theory could we stay? We would not stay there for permanent occupation; we would not stay there to force any government upon them; but we might be obliged to stay there in the discharge of a duty imposed by humanity and civilization, which could not be ignored, until peace was restored and life and womanhood safe, and until the people, by fair expression, had either adopted the so-called Republic of Cuba or had established a Republic of Cuba which they desired to live under. That is all; and that is obviously all that is meant by the President in his message. He is right.

Now, Mr. President, it is said that we must recognize the independence of the Republic of Cuba or become liable by intervention for the debts of Spain based upon the hypothecated revenues of Cuba. I know very little about the Spanish debt, either as to its form or amount. Some have said it is \$280,000,000; others say it is \$300,000,000. I do not know, and I have found no one to inform

me. Those bonds are Spanish bonds, I am told. I assume, of course, they are not the obligation of any government but the Spanish Government. Whether they are based upon a hypothecation of the revenues of Cuba alone, or the revenues of Cuba with other Spanish revenues, I do not know.

It might make a difference as a matter of law as to the liability of the government of Cuba when one shall have been established. The Senator from Indiana [Mr. TURPIE] seemed to think yesterday that our recognizing the independence of the "Republic of Cuba" would shield it from any obligation to discharge the debts of the Spanish Government based upon the hypothecation of Cuban revenue.

How could it? I do not know that any Cuban or Spanish bonds are held in the United States; I have never seen any, but it is stated that they are held in Germany, in France, and perhaps in Great Britain. How would our recognition of the so-called Republic of Cuba have anything to do with the question of their obligation to discharge the Spanish war debt? Would Germany be bound by our recognition of the Republic of Cuba? Would Great Britain be bound by our recognition of the Republic of Cuba. Would France be bound? Not at all.

Nobody would be bound but the United States, and if Germany or Great Britain or France, not having recognized the so-called Republic of Cuba, saw fit to insist that it or any government established there was liable to pay to the extent at least of the hypothecated revenue the debts due to a British subject or a German subject or a French subject, how long would those Governments be bound by our decision on a question of fact? Not a moment. The fact that we recognized her sovereignty would make no difference. There are no strictly legal liabilities of nations. Nations can not be sued. The sovereign can levy taxes with which to pay. The sovereign can repudiate, and if the sovereign has the strength, it can maintain that position. Such debts are only collectible at the cannon's mouth.

Mr. MONEY. Will the Senator from Wisconsin permit me to ask him a question? I do not want to interrupt the Senator without his consent.

Mr. SPOONER. The Senator can not ask me a question without interrupting me, but I permit it.

Mr. MONEY. I beg the Senator's pardon.

Mr. SPOONER. No; I permit it.

Mr. MONEY. Does the Senator state to the Senate as a lawyer that the United States, if it assists in driving the Spanish from the island and establishing a free, stable, and independent government there, will in any way become responsible for Spanish bonds because the revenues of Cuba have been hypothecated to that purpose?

Mr. SPOONER. I have not said anything of the kind.

Mr. MONEY. Do I understand the Senator to say that if the Republic of Cuba should be acknowledged and should win her independence, she would be responsible in any way?

Mr. SPOONER. That is a question of law and the power of other governments.

Mr. MONEY. That is why I ask the Senator. I acknowledge his eminent ability, and I should really like to have an opinion.

Mr. SPOONER. I have never made profession that I am an international lawyer.

Mr. MONEY. Just as the Senator is.

Mr. SPOONER. I have not found in the books, as far as my investigations have gone, and I have only looked into it for myself, a satisfactory statement upon the question. I think there might, as I said a moment ago, possibly be a difference if the obligations of Spain were based solely upon the hypothecation of the revenues of Cuba from what it would be if that were only a part of the security; but that is no matter now. It has been my opinion, and I will proceed to answer the Senator's question, that the Cuban Republic, or whatever government is established by the Cubans, would not be liable for any part of the Spanish war debt, even based upon a hypothecation, and solely upon a hypothecation, of Cuban revenues, and I will say why.

Mr. MONEY. Very good.

Mr. SPOONER. They are the obligations of Spain, as I understand it. They are not a mortgage upon the Cuban people. They are not a mortgage, strictly speaking, or secured by a mortgage, upon the territory of Cuba. It is a Spanish debt secured by pledge of revenues which can only be collected by the exercise of Spanish sovereignty.

Mr. MONEY. I am obliged to the Senator for his answer.

Mr. GRAY. I should like to ask the Senator from Wisconsin whether he has found anywhere in the books any allusion to the doctrine of international subrogation for the debts that are supposed to be based on the hypothecated revenues of a conquered territory, except when the territory has been absorbed by the country which is sought to be made liable. Is there any other ground?

Mr. SPOONER. That is not quite clear.

Mr. GRAY. I should like to hear the Senator as to whether he has found any such allusion.

Mr. SPOONER. I do not remember to have done so. I wish to be through. If the Spanish obligation or pledge is to pay the bonds, principal or interest, out of Cuban revenue, every man who took a bond must have taken it with notice, it seems to me, that he depended for payment out of the hypothecated funds upon the ability of Spain to continue her sovereignty, because, as I said a moment ago, the collection of these revenues is only an exercise of sovereignty, and if Spain lost her sovereignty over the Island of Cuba, she would of course lose her power to realize or pay the revenues pledged.

Mr. GRAY. The Senator did not quite catch my remark. Allow me to restate it. It is that there is nowhere in the books, so far as I know, and I ask him whether he has read to the contrary, any suggestion of such a liability except where the country sought to be made liable absorbs the territory. We do not expect to absorb it.

Mr. SPOONER. No; of course where there is annexation, absorption, you take it *cum onere* you take it with its burden of debt. That is different from revolution. That is different from an acquisition of title by war or conquest. That is an acquisition by agreement, as in the case of Texas. Where we acquire territory by such means, we take it subject to its indebtedness. When my friend from Ohio [Mr. FORAKER] read from Hall the other day a statement as to liability which follows absorption, he read a principle which I think no one would dispute.

But I beg him to remember, unless I am in the wrong, that that

is not this case. We do not intend to absorb the Island of Cuba. We do not intend to annex the Island of Cuba. We do not intend, I trust, for indemnity or anything else, to appropriate a dollar of the revenues of the Island of Cuba.

Mr. FORAKER. The Senator from Wisconsin will remember what I said was predicated upon a question asked me by the Senator from West Virginia [Mr. ELKINS], which did involve the idea that if we were to displace the Spanish Government and establish a stable government of our own upon that island, either our own Government or some other government, we would be responsible for it.

Mr. SPOONER. No, Mr. President, I never have heard that yet. The Senator from West Virginia may have said—

Mr. FORAKER. No; he did not say that. I asked him if that was not what he had in his mind; and it was upon that theory that I read the authority referred to.

Mr. ELKINS. It was not in my mind. I do not wish the Senator to misstate my record. I did not ask the question as stated.

Mr. FORAKER. If I may be allowed—

Mr. SPOONER. Certainly.

Mr. FORAKER. I will say to the Senator from West Virginia that I did not undertake to repeat what his question was, but I said that he asked me a question which gave rise to the discussion.

Mr. SPOONER. The authority which the Senator from Ohio read was an authority which, as I understand it, has nothing to do with this case, and that authority is as follows:

When a state ceases to exist by absorption in another state, the latter in the same way is the inheritor of all local rights, obligations, and property.

There is no doubt about that. That is utterly inapplicable to this case, because we are not proposing to absorb Cuba or to annex Cuba. We are proposing out of a duty to humanity and for self-protection to help free Cuba. We are not even proposing to establish a government of our own there or by our dictation. We simply propose, while occupying Cuba, to afford the people of Cuba a fair opportunity to establish an independent government of their own.

Mr. ALLEN. Will the Senator permit me a question?

Mr. SPOONER. Certainly.

Mr. ALLEN. The bonded indebtedness of Cuba is about \$519,000,000 in round numbers.

Mr. SPOONER. You do not mean Cuba.

Mr. ALLEN. I mean Cuba.

Mr. SPOONER. Oh, no!

Mr. ALLEN. Yes; I am correct. The Spanish indebtedness of Cuba, which is kept separate, amounts to \$519,000,000. All of that bonded indebtedness was issued before the war now in progress, with the exception of about \$175,000,000. What will become of that portion of the bonded indebtedness issued before the breaking out of hostilities?

Mr. SPOONER. That is just what I have been discussing and would have been through with but for the interruption.

Mr. ALLEN. The Senator was speaking about the indebtedness that has been issued—the Spanish war debt. I am now speaking of that portion of the indebtedness that existed before the war.

Mr. SPOONER. I do not care whether it be a war debt or what kind of a debt it is; upon the Senator's statement it is a debt

of Spain. It is an obligation of the Spanish Government. It is no obligation of the Cuban Government, for there never has been any, as I understand it. My proposition was simply this: Of course if it is not based upon or secured by a hypothecation of Cuban revenues there can be no question about it.

If it is secured by a hypothecation of Cuban revenues, it is dependent upon the continued sovereignty of Spain in Cuba to enable her to sequester those revenues and to pay them over to the creditors. And that bond was subject to this condition, although not written in it by the hand of man, made a part of it by a higher law than any man or set of men can enact, that Spain should so conduct herself, should so exercise her sovereignty in the Island of Cuba, that in the sight of God and in the light of the civilization of the century she might be permitted to continue it.

That she has not, nobody here disputes; and it has seemed to me very much like this case, because the principle which underlies those obligations—they are not international obligations—is very much the principle which underlies the obligations between individuals sometimes. If one owns a flat and mortgages the issues, rents, and profits—the income of it—for twenty-five years to the Senator from Rhode Island, and he makes a pesthouse of it and it becomes infected so that it is a menace to the health of the whole city, and the public interest and the public safety require that it should be battered down, and the municipality batters it down, would the municipality be liable for the debt?

Mr. President, there is an authority which I have here, but will not take the time to read. I will cite it. It is found in Hall's International Law, pages 243 and 244, including the elaborate note. This seems, I think, to clearly sustain the proposition.

There is another principle about it. It is stated by Mr. Theodore S. Woolsey. He states that—

There is another extreme case where a change of government may dissolve prior obligations. It is where a despotical government has contracted debts against a nation attempting to recover its liberties. The Government is, de facto, in possession of authority, and thus its acts are lawful; nevertheless, obligations entered into to subjugate the people must be regarded in this extreme case as pertaining to the government alone, and not as resting on the people.

But I have been imperfectly and hastily discussing the question whether obligations of Spain, based in part upon hypothecated revenues of Cuba, would be transferred to and be a debt of the new government. That would not depend upon the time when it became independent or when it was recognized, but upon the guns and aggressiveness of the nation or nations asserting the responsibility. Our action can not, I think, as I have stated, affect the question one way or the other.

But, Mr. President, I have been utterly unable to see what difference it can make, so far as any possible responsibility of the United States is concerned, whether we recognize the independence of the so-called Cuban Republic now or recognize the independence of a government later. Upon what theory could we be said to be responsible? Only upon this distinct ground, that having intervened wrongfully by force of arms to aid the Cubans in expelling the Spaniards, we had helped to take the pledge from reach of Spanish sovereignty, and therefore had rendered ourselves responsible for the debt, in whole or in part.

That principle would be just as strong, if there were anything

in it at all, which there is not, when applied to us if we recognized the so-called Cuban Republic before we go in there and help drive Spain out as it would if we help the Cubans drive out the Spanish sovereignty and then recognize a republic. We are not going there wrongfully, to begin with, and the suggestion of possible responsibility we repudiate at the outset and forever.

But, Mr. President, what if our intervention in Cuba, with the inevitable expulsion of Spanish sovereignty from that island, would bring to us an assertion by some other nation of moral responsibility for this debt? What of it? Could we listen to the feeble wail of the starving baby, and the awful cry of the starving mother, be mindful of all the horrors rife in that island, so near to us, take pencil in hand, work out the possible cost, and then fold our arms, turn our backs, and let the history of misrule, oppression, insurrection, savagery, with constant menace and cost to us, go indefinitely on? No; that is not the spirit of our people. There is no dollar mark on our flag.

An intervening power must count the cost, and we will have counted the cost. We can not stand it any longer, and the nations of the earth have no right to expect it of us.

The authority for intervention is ample and clear, and the right of intervention is justified by the facts and warranted by international law.

The rule, of course, is against the right of one State to intervene in the affairs of another, the general principle being that every nation is to be permitted to manage its own affairs, and to work out its own destiny. The last hundred years, however, have been filled with interventions, some on high grounds and for noble purposes, others upon the low plane of selfish purpose.

Almost every government has exercised the right, upon one ground or another.

In Manning's Law of Nations, by Sheldon Amos, it is said:

The only grounds on which interference with the affairs of a foreign state would now be held capable of justification are:

(1) The breach or attempted breach of a subsisting treaty, as where a state is restricted by treaty in the amount of its armaments, or in the quality of its military defenses; or else (2) the continuance of a revolutionary state of affairs in the foreign state under circumstances in which it seems highly probable that, without such interference, either public order can never be restored at all or can only be restored after such sufferings to humanity and such injuries to surrounding states as obviously overbalance the general evil of all interference from without.

These words read as if they were written for this case. I read from an English edition, published in 1875, and at the foot of the page from which I have just quoted, referring to the language used by President Grant on the attitude of the United States to the Cuban revolution, December 7, 1874, is this note:

The deplorable strife in Cuba continues without any marked change in the relative advantages of the contending forces. The insurrection continues, but Spain has gained no superiority. Six years of strife give the insurrection a significance which can not be denied. Its duration and the tenacity of its advance, together with the absence of the manifested power of repression on the part of Spain, can not be controverted, and may make some positive steps on the part of other powers a matter of self-necessity.

We are the only "other power," as the island lies at our door. And now, after the lapse of many years, including three years of a new revolution, we are obliged to "take positive steps as a matter of self-necessity."

Professor Lawrence, at page 120, writes of it thus:

In the opinion of some writers interventions undertaken on the ground of humanity and interventions for the purpose of putting a stop to religious persecutions are also legal. But we can not venture to bring them within the ordinary rules of international law. It certainly does not lay down that cruelty on the part of a government renders it liable to be deprived of its freedom of action, nor does it impose upon states the obligation of preventing either ordinary barbarity on the part of their neighbors or that special kind of inhumanity which takes the form of religious persecution.

At the same time, it will not condemn such interventions if they are undertaken with a single eye to the object in view and without ulterior considerations of self-interest and ambition. Should the cruelty be so long continued and so revolting that the best instincts of human nature are outraged by it, and should an opportunity arise for bringing it to an end and removing its cause without adding fuel to the flame of the contest, there is nothing in the law of nations which will condemn as a wrongdoer the state which steps forward and undertakes the necessary intervention. Each case must be judged on its own merits.

There is a great difference between declaring a national act to be legal, and therefore part of the order under which states have consented to live, and allowing it to be morally blameless as an exception to ordinary rules. I have no right to enter my neighbor's garden without his consent; but if I saw a child of his robbed and ill-treated in it by a tramp, I should throw ceremony to the winds and rush to the rescue without waiting to ask for permission. In the same way a state may, in a great emergency, set aside everyday restraints; and neither in its case nor in the corresponding case of the individual will blame be incurred.

But, nevertheless, the ordinary rule is good for ordinary cases, which, after all, make up at least ninety-nine hundredths of life. To say that it is no rule because it may laudably be ignored once or twice in a generation is to overturn order in an attempt to exalt virtue. An intervention to put a stop to barbarous and abominable cruelty is "a high act of policy over and above the domain of law." It is destitute of technical legality, but it may be morally right and even praiseworthy to a high degree.

The grounds for intervention are abundant. It is too narrow a statement of the case to confine it to the horrors which have shocked the world during the present insurrection. We have no right to forget the ten years of unavailing struggle, attended by indescribable atrocities. During thirteen years since the close of our war this island, lying almost in sight of our shores, has been the scene of insurrection and of monstrous horrors, and in the intervening years of nominal peace the promises of Spain of governmental reforms have been broken, and misrule there has been so oppressive in every way as not only to justify but compel renewed insurrection.

The arraignment of Spain contained in the President's message differs not a great deal from the arraignment contained in General Grant's messages. Secretary Fish, in his dispatch to the Spanish minister upon the *Virginius* case, dated April 18, 1874, sums up the then situation as follows:

For five years the policy of repression, of confiscation, of summary execution of political prisoners, of refusal of reforms, of denial of self government, of maintenance of slavery, in short, the policy of violence and force, has held sway in Cuba. It is understood that the insurrection calls to-day for as many troops to keep it in restraint as were necessary in 1869.

During these five years this Government has watched events in Cuba, perhaps not always patiently, but certainly always impartially. It has seen vessels sailing under its flag intercepted on the high seas and carried into Spanish ports. It has seen the property of its citizens embargoed and their revenues sequestered; and when it has complained, it has been met by promises of restoration; but the official assurances of Spain in that respect have in most cases not been complied with. It has seen its citizens condemned to death under the form of military law, and executed in violation of the treaty obligations of Spain. It has seen other citizens of the United States mobbed in the streets of Havana for no other reason than that they were citizens of the United States, or the accidental circumstance of the color of the dress. It has stretched its powers and interfered with the liberties of its citizens in order to fulfill all its duties as a sovereign nation toward the power which in Cuba was tolerating the evil influences of reaction, and of slavery, and of

"the deplorable and pertinacious tradition of despotism" referred to by the minister of transmarine affairs, all of which made the things complained of possible. It has refrained from the assertion of its rights, under the hope, derived from the constant assurances of the Government of Spain, that liberty and self-government would be accorded to Cuba, that African slavery would be driven out from its last resting place in Christendom, and that the instruments of the *Casino Español* would be restrained in their violence, and made to obey law and to respect the treaty obligations of Spain.

All this and more, intensified a thousandfold by the infamous policy of Weyler, have we borne during the last three years.

The testimony of Senators upon this floor from personal observation as to the starvation and merciless savagery prevailing in that island will be a haunting and horrible memory.

This people has borne it, and borne it, and forborne, through many, many years, patient almost, if not quite, to the point of inhumanity. This Government has shrunk from becoming involved in a war with Spain.

We have policed our waters, repressed our citizens, at great cost, and we have suffered incalculable loss from interrupted and paralyzed commerce.

The great Republic must have suffered in the estimation of the Christian world, that it could tolerate, without intervention, such tyranny and atrocities.

We have stood by, refusing to let any other government intervene in Cuba because of our national policy, which we can not and will not surrender.

We can not longer be inactive. We have been forced to the conclusion that Spain, by her rule, not only justifying but compelling insurrection, with its accompaniment of cruelty, corruption, lust, loot, starvation, and blood, can not in the future govern that island by different methods, or with different results, than those which have characterized her past dominion.

She has violated treaty obligations, destroyed the property of American citizens, and trampled in the most reckless and audacious manner upon their rights.

Senators here complain of Mr. Cleveland for his course in relation to Cuba. I do not. I assume he had a good reason for his inaction, just as General Grant had for his.

One thing seems clear. Having reference to the past and to the present, we can not tolerate it any longer.

We can not have indemnity for all the past, but we can and will have security for the future.

Now, Mr. President, a word about the *Maine*. The discussion of the case by the Committee on Foreign Relations is of great ability. But there is one striking fact which has been overlooked and which impresses me greatly. The destruction of the *Maine*, while it may not be so established as a governmental act, and I am not ready to say that it is, as to warrant us in declaring war against Spain, to my mind furnishes upon a well-established principle of international law abundant ground for armed intervention and for insisting upon the installation of a government in Cuba which for all time, independent of Spain, shall be able to discharge its international duties.

I have before me the report of the Spanish court, with the evidence upon which it is based. The *Maine* was at rest in the harbor of Havana at 9.40 in the evening, when everybody on board of the ship was in fancied security, as they had a right to be, for if anywhere in the world an American sailor may rightfully feel

secure one would think it would be on his own ship, under our flag, on a visit of peace to a friendly harbor. In a moment she was by explosion transformed from a magnificent ship of war into a great twisted metallic burial case. Of course our authorities ordered a court of inquiry.

That court, composed of officers of unimpeachable integrity and of conceded ability, proceeded with the inquiry. That court, it must be remembered, was hampered in its investigation. It sat in a foreign port. It had not power, I believe—the Senator from New Hampshire [Mr. CHANDLER] can tell me if I am wrong—even at Key West to compel the attendance of witnesses. The investigation was made. They examined such witnesses as they could find, and after carefully exploring the whole subject made report to the Government that the *Maine* was exploded by an external force, and expressly excluded accident or any negligence upon the part of the captain, his officers, and the men under his command.

Spain, of course, anticipated that investigation and that report, and at once instituted an inquiry of her own, conducted on her territory, where she could call any witness and compel his attendance, and promptly transmitted the report with the testimony to the Government of the United States. Our report, if it so found, would be a *prima facie* establishment of the fact of external explosion. It was doubtless expected that the Spanish report would make a *prima facie* showing that it was an accident, and thereby an international issue would be made for trial before some court of experts to be appointed as agreed, by whose finding of fact Spain very readily agrees to be bound in advance.

Mr. President, I have read all of the evidence taken by the Spanish court. I have gone carefully through the report of the Spanish court. There is one phase of it which to my mind more than anything else is inculpatory. It has been stated by Captain Sigsbee that a dozen men might have dropped a buoyant mine under the *Maine* and not have been discovered. That would have been a mine, of course, which would have exploded only by contact. It would not have been one of the mines to be discharged by an electric flash from the shore. The Spanish court deals with that question, and I want to read to the Senate what it says about it:

Before proceeding to the consideration of other data, I think it well to recall to your excellency's enlightened mind the phenomena which accompany the explosion of a submarine mine, meaning thereby what is known under the generic term of torpedo, and leaving aside all that can apply exclusively to a subterranean mine, on account of the utter impossibility that such a mine could have been prepared without batteries (elementos), or even with batteries, without the knowledge of the authorities and of the public generally.

That is a subterranean mine as distinguished from a submarine mine.

The ignition of the torpedo must necessarily have been produced either by collision or by an electrical discharge, and as the state of the sea and the wind did not allow of any motion in the vessel the hypothesis of a collision at that moment must be rejected.

The Spanish court here refutes the idea that the explosion could have been caused by a buoyant mine or by any torpedo resulting from contact with the ship.

And we must consider that of an electric current sent by a cable (wire) from a station; but no traces or signs of any wire or station have been discovered.

We take it to be established that that ship was destroyed by an external explosion, as our board finds—by the explosion of a submarine mine. The Senator from Colorado [Mr. WOLCOTT], always eloquent, never more eloquent, never more patriotic than he was to-day, stated the truth when he said that the explosion of the *Maine* had had infinitely to do with the situation which has led us up to the verge of war. Our people believe it was destroyed as found by our court.

Mr. President, no one could know better the effect upon an already intense situation of the explosion of the *Maine* than the Spanish Government. The destruction of our ship and men in her harbor must, all things considered, have given her officials grave concern. It was of the utmost consequence to Spain to establish that the *Maine* was exploded by accident and exempt herself and her officials from the suspicion that the ship was exploded by a submarine mine, over which she was moored by Spanish direction. It was easy for Spain to make that proof if it were a fact. Mr. President, it was easy. How? Does anyone doubt if there was a submarine mine under the *Maine* that the Spanish officials knew it? Does anyone suppose for a moment that there are mines in the harbor of Havana unknown to the military authorities? Does anyone suppose for a moment that there are mines in any of the harbors along our coast unknown by chart and accurate location to our authorities? It can not be possible, for they would be useless if the mine is to be exploded by electricity.

I repeat, if there was a mine, Mr. President, in the harbor of Havana, the Spanish authorities knew it. If there was no mine under the *Maine*, they knew it. If they could have proven that there was no mine there, God knows they would have been swift to prove it. But go through this evidence and you will not find a single witness called, and I ask my friend from Minnesota [Mr. DAVIS], who has examined it carefully, too, if I am not correct—you will not find a single witness called to establish the negative fact, entirely *under their control, beyond our reach, that there was no mine under the Maine*. The burden of proving the negative was upon them, for the evidence to prove it was entirely in their possession.

It is a familiar principle of law that when one has in his possession exculpatory evidence and fails to use it, or attempts to make a false issue upon it, it is warrant for the gravest suspicion at least; and I would have been infinitely more satisfied with the situation in regard to the *Maine* if the Spanish court had called the authorities of the Spanish army in Havana and had shown that there were no mines in the harbor or none under our ship.

Mr. President, *if there had been no mine under the Maine, they would have proven it*. But make an issue of it; refer it to some board of experts; and what then? No witness could be called before that board of experts for Spain except the witnesses Spain chose. I acquit, as did the Senator from Massachusetts [Mr. HOAR] yesterday, General Blanco. I have not felt that he could be guilty of complicity in it. General Lee has testified that General Blanco exhibited the utmost emotion: that he wept when it occurred.

But, Mr. President, the testimony taken was utterly inconsequential; the report of the same quality. They dispose of the case by showing that other ships had exploded, that there were no dead fish to be found, was no hole under the ship, and no wave at the time

of explosion. One can not read the testimony, consider what is shown and *what is not shown*, without being driven to the conclusion that Spanish hate perpetrated that awful, cowardly crime, the murder under our flag in that harbor of the men of the *Maine*. No; we are not in a position to declare war against Spain, I think, on account of the *Maine*, but our Navy must not be blamed if flying at every masthead when the ships go into battle is the legend, "Remember the *Maine*."

But what of its relation to intervention? Only this, Mr. President: It is laid down by Mr. Hall, and he is quoted with approval by the Supreme Court in the *Wiborg* case, unreported, treating of intervention, as follows:

Interventions for the purpose of self-preservation naturally include all those which are grounded upon danger to the institutions, to the good order, or to the external safety of the intervening state.

To some of these no objection can be offered.

Now mark this:

If a government is too weak to prevent actual attacks upon a neighbor by its subjects, if it fomented revolution abroad, or if it threatens hostilities which may be averted by its overthrow, a menaced state may adopt such measures as are necessary to obtain substantial guaranties for its own security. The state which is subjected to intervention has either failed to satisfy its international duties or has intentionally violated them. It has done or permitted a wrong, to obtain redress for which the intervening state may make war if it chooses. If war occurs the latter may exact as one of the conditions of peace at the end that a government shall be installed which is able and willing to observe its international obligations.

If there were nothing else, this of itself is sufficient warrant for intervention. Acquitting Spain as a sovereignty, and General Blanco as her representative, of any complicity in the destruction of the *Maine*, the fact remains that under circumstances which called for unusual measures of protection, her government in Cuba was at least too weak to prevent her subjects from destroying our battle ship and murdering our sailors.

We can endure it all no longer.

We intervene, Mr. President, not for conquest, not for aggrandizement, not because of the Monroe doctrine; we intervene for humanity's sake; we intervene to gain security for the future; we intervene to aid a people who have suffered every form of tyranny and who have made a desperate struggle to be free. We intervene for our own permanent peace and safety. We intervene upon the highest possible ground, Mr. President; and upon this case we may, although with the utmost reluctance—for we are a people devoted to the arts of peace—go into the war, if it must come, confidently invoking "the considerate judgment of mankind" and the blessing of Almighty God.

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